Supreme Court, U. S.
FILED
JUN 11 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-1953

DAVID R. FREEMAN,
Director, State of Missouri Department of Social Services,
and,
JOHN ZUMWALT,
Director, State of Missouri Department of Social Services,
Division of Family Services,
Petitioners,

v.

LOU EMMA CHAMBLY, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JOHN ASHCROFT
Attorney General

WILLIAM F. ARNET
Assistant Attorney General

MICHAEL L. BOICOURT
Assistant Attorney General

Supreme Court Building
P.O. Box 899
Jefferson City, Missouri 65102
314-751-3321

Attorneys for Petitioners.

June, 1980

KELLY PRESS, INC., 201 South Eighth Street, Columbia, Missouri Dial 449-4163

INDEX

Page

Opinions Below 1

Jurisdiction 2

Questions Presented 2

Statutes and Federal Regulations Involved 3

Statement of the Case 4

Reasons for Granting the Writ 11

I. The Decision Below Finding that the State of Missouri Could Not Implement Reasonable Guidelines in the Administration of its AFDC Program Defining the Amounts Allowable to Working AFDC Recipients/Applicants as Deductions for Transportation, Clothing and Lunch Expenses Incurred in the Production of Income Misinterprets the Provisions of 42 U.S.C. §602(a)(7) and this Court's Holding in the Case of *Shea* v. *Vialpando,* 416 U.S. 251 (1974), and as Such Constitutes an Important Question of Federal Law which has not been, but should be, Settled by this Court 11

II. The Decision Below Refusing to Consider the Position and Practice of the Department of Health, Education and Welfare when Interpreting the Meaning to be Given to the Provisions of 42 U.S.C. §602(a)(7) Relating to Deductions Allowable for Transportation, Clothing and Lunch Expense of Working AFDC Recipients/Applicants, is in Conflict with Applicable Decisions of this Court 17

III. The Decision Below Awarding Attorneys' Fees on Appeal Presents an Important Question of Federal Law which should be Settled by this Court, *i.e.,* does 42 U.S.C. §1988 Authorize the Federal Courts of Appeal to Award Attorneys' Fees 19

IV. The Decision Below that Attorneys' Fees Could be Awarded in a case Decided under the Supremacy Clause, presents an Important Question of Federal Law which has not been, but should be, Settled by this Court 20

V. The Decision Below, Allowing the Award of Attorneys' Fees to the Respondents even though they were Represented by Publicly Funded Legal Aid Attorneys and thus Incurred no Expense for Attorneys' Fees in this Action Presents an Important Question of Federal Law which has not been, but should be, Settled by this Court 22

Conclusion 24

Appendix 1 (Opinion and Order of Court of Appeals issued April 24, 1980) A-1

Appendix 2 (Opinion and Order of Court of Appeals issued May 16, 1980) A-3

Appendix 3 (Opinion and Order of District Court issued November 1, 1979) A-4

CITATIONS

Cases

Page

Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 420 (1975) 19, 21

Chambly v. Freeman, No. 79-2006 (8th Cir. April 23, 1980) 1

Chambly v. Freeman, 478 F.Supp. (W.D.Mo. 1979) ...A-2

Far East Conference v. United States of America, 342 U.S. 570 (1952) 18

Gaddis v. Wyman, 336 F.Supp. 1225 (S.D.N.Y. 1972) ...23

Gagne v. Mahre, 594 F.2d 336 (2nd Cir. 1979) 21

Holtt v. Vitek, 495 F.2d 219 (1st Cir. 1974) 23

Mathews v. Eldridge, 424 U.S. 319 (1976) 18

Rosado v. Wyman, 397 U.S. 397 (1970) 18, A-10

Seals v. Quarterly County Court of Madison County, Tennessee, 562 F.2d 390 (6th Cir. 1977) 21

Shea v. Vialpando, 416 U.S. 251 (1974)..... 2, 3, 9, 10, 11, 14, 17, A-10, A-11, A-12

Southwestern Sugar & Molasses, Co. v. River Terminals Corporation, 360 U.S. 411 (1959) 18

Volkswagenwerk Aktiengesellschaft v. Federal Maritime Commission, 390 U.S. 261 (1968) 18

Woolfolk v. Brown, 358 F.Supp. 524 (E.D.Va. 1973) 23

Miscellaneous

28 U.S.C. §1254(1) 2

28 U.S.C. §1331 4

28 U.S.C. §1343(3) & (4) 4

28 U.S.C. §2201 4

28 U.S.C. §2202 4

42 U.S.C. §601, *et seq* 4

42 U.S.C. §602(a)(7) ...2, 3, 7, 9, 10, 11, 16, 17, 18, 19, 20, A-5, A-7, A-10, A-11, A-13

42 U.S.C. §1983 .....4, 22

42 U.S.C. §1988 .....3, 19, 21, 22, 23

45 C.F.R. §233.20(a)(6)(iv) 4, 13

45 C.F.R. §233.20(a)(7)(i) 4, A-7

CCH, *Standard Federal Tax Reporter,* Vol. 2, Reg. 1.162-2 14

Missouri Division of Family Services' Manual, Chapter 1, Section III, f(5) 5, 10, A-7, A-12, A-13

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. _____

DAVID R. FREEMAN,
Director, State of Missouri Department of Social Services,
and,
JOHN ZUMWALT,
Director, State of Missouri Department of Social Services,
Division of Family Services,
Petitioners,

v.

LOU EMMA CHAMBLY, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The petitioners, David R. Freeman and John Zumwalt, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered in this proceeding on April 24, 1980.

OPINIONS BELOW

The opinion of the Court of Appeals, *Chambly* v. *Freeman,* No. 79-2006, appears in Appendix 1 hereto. The order of the Court of Appeals awarding fees to respondents' attorneys appears in Appendix 2. The opinion of the United States District Court for the Western District of Missouri,

officially reported at 478 F.Supp. 1221, appears in Appendix 3.

JURISDICTION

The opinion of the Court of Appeals for the Eighth Circuit was entered on April 24, 1980. On May 16, 1980, the Court of Appeals entered its order awarding attorneys' fees. This petition for certiorari was filed within ninety (90) days of those dates. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether the provisions of 42 U.S.C. §602(a)(7), and this Court's holding in *Shea* v. *Vialpando,* 416 U.S. 251 (1974), forbid a state from implementing reasonable guidelines in the administration of its AFDC program defining the amounts allowable to working AFDC recipients/applicants as deductions for transportation, clothing and lunch expenses incurred by these individuals in producing earned income.

2. Whether the Missouri procedure allowing working AFDC recipients/applicants who operate an automobile a 17¢ per mile deduction to cover their transportation expense attributable to the production of income constitutes a reasonable limitation upon this expense within the meaning of 42 U.S.C. §602(a)(7) and this Court's holding in *Shea* v. *Vialpando,* 416 U.S. 251 (1974).

3. Whether the Missouri procedure allowing working AFDC recipients/applicants a one dollar ($1.00) per day deduction (an amount in addition to the 30¢ per meal per day allowance for food in the recipient's basic grant) to cover their lunch expense attributable to the production of income constitutes a reasonable limitation upon this expense within the meaning of 42 U.S.C. §602(a)(7) and this Court's holding in *Shea* v. *Vialpando,* 416 U.S. 251 (1974).

4. Whether the Missouri procedure allowing working AFDC recipients/applicants a deduction for only the expense of purchasing special work uniforms (an allowance in addition to the amount contained in a recipient's basic grant to cover general clothing) to cover their clothing expense attributable to the production of income constitutes a reasonable limitation upon this expense within the meaning of 42 U.S.C. §602(a)(7) and this Court's holding in *Shea* v. *Vialpando*, 416 U.S. 251 (1974).

5. Whether the Court should consider the position and practice of the Department of Health, Education and Welfare when interpreting the meaning to be given to the provisions of 42 U.S.C. §602(a)(7) relating to deductions allowable for transportation, clothing and lunch expenses of working AFDC recipients/applicants.

6. Whether 42 U.S.C. §1988 confers upon federal courts of appeals the authority to award attorneys fees to prevailing parties.

7. Whether 42 U.S.C. §1988 authorizes the award of attorneys' fees to prevailing parties who are represented by publicly funded legal aid attorneys and thus incur no expense for attorneys' fees in an action.

8. Whether 42 U.S.C. §1988 authorizes the award of attorneys' fees in a case where a state regulation is found to be inconsistent with the provisions of the Social Security Act, 42 U.S.C. §602(a)(7), and is thereby invalidated under the Supremacy Clause.

STATUTES AND FEDERAL REGULATIONS INVOLVED

42 U.S.C. §602(a)(7):

> "[T]he State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to

families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the needs of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income. . . ."

45 C.F.R. §233.20(a)(7)(i):

"Provide that the following method will be used for disregarding earned income: The applicable amounts of earned income to be disregarded will be deducted from the gross amount of 'earned income' and all work expenses, personal and non-personal, will then be deducted. Only the net amount remaining will be applied in determining need in the amount of the assistance payment."

45 C.F.R. §233.20(a)(6)(iv):

"With reference to commissions, wages, or salary, the term 'earned income' means the total amount, irrespective of personal expenses such as income-tax deductions, lunches and transportation to and from work, and irrespective of expenses of employment which are not personal, such as the cost of tools, materials, special uniforms, or transportation to call on customers."

STATEMENT OF THE CASE

The respondents initiated this lawsuit by filing a complaint for "injunctive, declaratory and other relief" on July 11, 1979, in the United States District Court for the Western District of Missouri. The Complaint premised federal jurisdiction on 28 U.S.C. §§1331 and 1343(3) and (4), 28 U.S.C. §§2201, 2202, 42 U.S.C. §1983 and 42 U.S.C. §601,

et seq. The named plaintiffs purported to sue in their own behalf and on behalf of a purported class of employed heads of households whose eligibility for or amount of AFDC grant was effected by Missouri's policy respecting deductions for work-related expenses in the areas of lunch, clothing and personal transportation. The policy challenged by the plaintiffs provided that the AFDC applicant or recipient could, at his or her option, choose to itemize their work-related expenses. If itemized, 60¢ per meal was allowed for lunch, 15¢ per mile was allowed for personal transportation, and the cost of uniforms and special shoes was allowed. Specifically, the Missouri Division of Family Service's Manual, Chapter 1, Section III, f(5) reads as follows:

> "(5) *Costs of Producing Income in Excess of Personal Standard*—Expenses in this item are allowed for only that portion that exceeds the personal standard for clothing (the use of which is limited to the employment such as uniforms and special shoes, etc.), transportation (which includes the expenses of transporting a child to and from a child care center or babysitter), lunches, union dues, mandatory retirement, etc., related to employment. (See Appendix A or the chart on the IM-2C for the personal standard amounts allowed the claimant in Tables A and B because these amounts vary with the level of income.
>
> If the claimant has stated on the IM-2C that she does not wish to claim actual personal work related expenses, no further investigation into these expenses of producing income must be made.
>
> If the claimant has stated on the IM-2C that she does wish to claim actual personal work related expenses and her total costs for uniforms, lunches,

transportation and union dues, etc., exceed that allowed in the personal standard, the *difference between the personal standard and the actual costs may be allowed.* This difference should be added to items (1)-(4) above and shown as Other Expense of Producing Income on the IM-30. If the claimant's costs for the expenses mentioned in item (5) are less than the personal standard, only items (1)-(4) are shown as Other Expenses of Producing Income.

Before allowing the costs in item (5) as an expense of producing income, such costs must be verified when practical to do so and explained otherwise. If the costs or explanation of them are not reasonable in the worker's and/or supervisor's judgment, verification must be provided.

In determining transportation cases, the cheapest mode of transportation reasonably available will be used. Transportation by car will be allowed at the rate of 15¢ per mile. The 15¢ allowed includes all costs incurred, including such things as parking fees. Transportation by bus or by taxicab (if required) will be allowed on an as-paid basis.

When the claimant has meal expense (either buying or bringing from home) because of her employment, allow 60¢ per meal as an expense.

The formula to be used to determine the total amount to be allowed as *Other Expense of Producing Income* is as follows:

(1) Verify or explain the total cost of expense for clothing, transportation, lunches, union dues, mandatory retirement, etc., as shown in item (5).

(2) Subtract the personal standard already included in Tables A and B (See Appendix A or the chart on the IM-2C for the amount).

(3) Add this balance to any expenses for items (1)-(4) and enter on the IM-30 under 'Other Expenses of Producing Income.' ''

Before the District Court entered its opinion and order in this cause, the meal allowance had been increased to $1.00 per day and the mileage rate to 17¢ per mile. The trial of this cause was held in the District Court on August 17 and September 6 and 7, 1979.

The respondents claim that expenses incurred in the operation of their automobiles for work-related transportation exceed the 17¢ per mile allowed by the state as a deduction for transportation expense under 42 U.S.C. §602 (a)(7). Respondent Schoue claims that it costs her 20¢ per mile to operate her 1968 Pontiac LeMans for work-related transportation and respondent Loeffel claims that it costs her 29¢ per mile to operate her 1977 Ford Pinto for work-related transportation.

None of the respondents are required to wear any special type of uniform in connection with their employment. However, the respondents maintain that so-called dress codes of their respective employers require that they present a neat appearance and consequently they must maintain a separate wardrobe of "work" clothing. Two of the respondents state that their other wardrobe of "disco" clothing would be inappropriate for work.

The respondents also incur lunch expenses in excess of $1.00 per day because they choose to eat at restaurants near their places of employment, rather than bringing their lunch to work. All of the respondents concede that their respective employers do not prohibit them from bringing

their lunches and in fact provide a place for them to eat on the premises.

The state of Missouri allows working AFDC recipients and applicants a standard deduction of $30.00 per month for work-related expenses. However, if the recipient/applicant desires to do so, he or she may choose to itemize deductions in the areas of transportation, lunch and clothing.

If the recipient/applicant chooses to itemize work-related expenses in the area of transportation, he or she is allowed a deduction of 17¢ per mile for any work-related mileage including transportation to and from work. The 17¢ per mile allowed by the state of Missouri for this expense is equivalent to the mileage amount allowed state employees for the operation of their motor vehicles on state business and it is supported by a study of the Missouri Office of Administration showing that the figure includes depreciation, repairs and maintenance, replacement of tires, accessories, gas, oil, insurance, interest, taxes and fees both state and federal, including registration and titling of the vehicle. The study conducted by the Missouri Office of Administration establishes that the 17¢ per mile figure is adequate to compensate the operation of all motor vehicles except a large, new, gas-guzzling automobile. The only car not fully compensated by the 17¢ per mile figure in the study was a brand new Chevrolet Impala with a V-8 engine and air-conditioning.

In the area of clothing, Missouri allows AFDC recipients/applicants to deduct as an expense reasonably attributable to the production of income the cost of any uniforms or special shoes required to be purchased by the individual in connection with his or her employment. The state does not allow a recipient or applicant to deduct the cost of clothing other than uniforms or special shoes when the individual can wear this clothing away from the job

as well as at work. With regard to recipients, the basic AFDC grant includes in every instance a component to cover the cost of general clothing.

The state of Missouri allows an AFDC recipient/applicant to deduct as an expense reasonably attributable to the production of income an amount of $1.00 per day for lunch. In the case of AFDC recipients the basic grant includes a component of 30¢ per meal per day to cover the cost of food. The $1.00 allowed by the state of Missouri as a deduction for those working AFDC recipients who choose to itemize their deductions is in addition to the amount for food contained in the basic grant. A publication by the United States Department of Agriculture prepared in the summer of 1979 and entitled "Family Economics Review" establishes that the average cost of a meal for a female between the ages of 20 and 54 years, a category in which all of the named respondents fall, varies between 54¢, for what is considered a thrifty plan, to 70¢ for a low cost plan, to 88¢ for a moderate cost plan, and up to $1.00 for a liberal plan.

At least sixteen states follow a procedure allowing a standard mileage amount to cover transportation expense in this area. At least twenty-four states require that before a working AFDC recipient/applicant may deduct the cost of clothing as a work-related expense, the clothing must be either a uniform or special shoes required by the employment. Most states do not appear to allow any additional deduction for the cost of lunch beyond that included in the basic grant. The procedures followed by Missouri and other states for handling deductions for work-related expenses pursuant to 42 U.S.C. §602(a)(7) were adopted subsequent to this Court's opinion in the case of *Shea* v. *Vialpando*, and with the expressed approval of the United States Department of Health, Education and Welfare.

On November 1, 1979, the United States District Court for the Western District of Missouri, Judge Elmo B. Hunter, Presiding, entered its Opinion and Order declaring that the petitioners had violated Title 42 U.S.C. §602(a)(7) and its implementing regulations, by their procedures for handling food, clothing and transportation expense deductions for working AFDC recipients/applicants, and enjoining the petitioners from enforcing those portions of the Missouri Division of Family Services' Manual, Chapter 1, Section III, f(5), which contain the procedures for allowing food, clothing and personal transportation deductions for employed AFDC applicants and recipients. In essence, the District Court held that the petitioners may not limit the deductions allowed for transportation, food and clothing to 17¢ per mile, $1.00 per day, and uniform and special shoes respectively. The court held that unless the AFDC recipients/applicants are allowed to show expenses in excess of the amounts utilized by the state of Missouri in the areas of transportation and lunch and claim expenses for clothing other than uniforms and special shoes, the Missouri procedure violates 42 U.S.C. §602(a)(7) and this Court's holding in *Shea* v. *Vialpando.*

The petitioners filed their notice of appeal and motion for a stay of proceedings to enforce judgment pending appeal on November 9, 1979. On April 24, 1980, the United States Court of Appeals for the Eighth Circuit issued an order affirming the judgment of the District Court based upon the opinion of the lower court.

REASONS FOR GRANTING THE WRIT

I.

The decision below finding that the state of Missouri could not implement reasonable guidelines in the administration of its AFDC program defining the amounts allowable to working AFDC recipients/applicants as deductions for transportation, clothing and lunch expenses incurred in the production of income misinterprets the provisions of 42 U.S.C. §602(a)(7) and this Court's holding in the case of Shea v. Vialpando, **416 U.S. 251 (1974), and as such constitutes an important question of federal law which has not been, but should be, settled by this Court.**

In its opinion of November 1, 1979, which was adopted *in toto* by the Court of Appeals on April 24, 1980, the District Court acknowledged the fact that the Missouri procedure under attack here is distinguishable from the Colorado procedure involved in the case of *Shea* v. *Vialpando,* 416 U.S. 251 (1974). Nonetheless, the court went on to base its decision in the instant case on the "basic thrust" of the *Shea* opinion. The petitioners respectfully submit that the District Court and the Court of Appeals have misinterpreted the holding of this Court in the *Shea* case.

In *Shea* v. *Vialpando,* this Court granted certiorari

> ". . . to determine whether, in light of §402(a)(7), a State may adopt *a standardized allowance* for expenses attributable to the earning of income which does not allow an applicant to deduct expenses that exceed *the standard*. . . ." 416 U.S. 252, 253 (Emphasis supplied).

It is at once obvious that the question in *Shea* was whether a state could utilize *a single standard* amount to compensate the recipient for *all expenses* related to producing income. This Court did not hold that states are required to allow

every expense submitted by recipients and claimed to be attributable to producing income. On the contrary, this Court in *Shea* specifically held that a limitation of "reasonableness" may be placed upon the recognition of expenses associated with the production of income. 416 U.S. 260, 266. This Court in *Shea* was obviously interested in seeing that recipients are not locked into an absolute $20, $30, or $40, etc., per month maximum to cover all the expenses of producing income. But this Court did not conclude that the lid should be taken off altogether, and the recipent allowed to claim expenses in any amount he so desires so long as he can verify the expenditure. The control of the program in this respect was left to the states since they were given the clear authority to place limitations upon the claimed expenses based upon "reasonableness." The evidence presented in the instant case showed that this is precisely what is done under Missouri's procedures in the areas of lunch, clothing and transportation expense deductions.

In regard to lunch expenses, the testimony at trial indicated that the basic grant provided recipients includes a food allocation of approximately 30¢ per meal per day. In addition, the regulations of the Missouri Division of Family Services allow a deduction for lunch expenses for working AFDC recipients of $1.00 per day. This means that the state is in effect allowing the recipient $1.30 per day for lunch. The evidence presented by the petitioners also established that $1.30 was more than enough to prepare an adequate lunch to take to work. None of the named plaintiffs testified that they were prohibited from bringing their lunch to work, and there is no evidence to show that any member of the class faces such a prohibition. The petitioners submit that it is reasonable to limit the lunch expense to an amount sufficient to bring one's lunch to work. This is an adequate incentive, and there is no necessity for the

petitioners to allow recipients to eat out just because they choose to do so. It is clear that the petitioners may place a limitation on the lunch expense deduction, and since the expenditure of public funds is involved here, this limitation on the amount of lunch expense deduction is reasonable.

In the area of clothing, the state procedure allows a deduction for uniforms or special clothing necessary to obtain and hold a job. Petitioners submit that this limitation is reasonable since once again the basic grant includes an amount to cover general clothing. The federal regulations in this area also refer to "uniforms" as a limitation when discussing the clothing deduction. See 45 C.F.R. §233.20(a)(6)(iv).

The testimony in this case established that the named plaintiffs could wear the clothes worn to work at any time or place, but that they *chose* not to do so, because they maintained a separate wardrobe of "disco clothes" for their social pleasure. Is it unreasonable for the state to take the position that it is not required to assist recipients or applicants in funding separate wardrobes for social events? Petitioners think not.

In the area of transportation, the state allows 17¢ per mile for recipients to drive their cars to and from work and on the job. Mr. Jerry Yarrington of the Missouri Office of Administration testified at trial that this figure is utilized by the state to reimburse its employees *and* that it includes components to cover depreciation, repairs and maintenance, tires, accessories, gas, oil, insurance, finance charge, all taxes, registration fees and titling costs. The witness went on to state that based on his department's study to support the 17¢ per mile figure, it was sufficient (more than sufficient in the case of most cars) to fully cover the cost of operating the vast majority of automobiles. He stated that the only category of automobile not

covered completely by the 17¢ figure is a large, brand new, full size car whose cost of operation is high due to the expensive nature of the vehicle (maintenance, repairs, depreciation and finance charge), and its fuel inefficiency.

The Internal Revenue Service has also computed a standard mileage allowance for income tax deduction purposes. See CCH, *Standard Federal Tax Reporter*, Vol. 2, Reg. 1.162-2, pp. 17106-17107. The IRS also uses a figure of 17¢ per mile to cover all operating and fixed costs when a taxpayer seeks a deduction for business related travel expense. The costs covered by this allowance includes gas, oil, repairs, license tags, insurance, and depreciation. Please note that the IRS allows 17¢ per mile only for the first fifteen thousand miles, and 10¢ per mile thereafter.

There can be no dispute that the state may put a reasonable limitation on the transportation expense deduction. The mileage figure is simply one way of imposing this limitation rather than dictating the type of car a recipient may purchase or the number of tune-ups, oil changes, types of repairs or insurance, etc., a recipient may obtain in order to claim a "reasonable transportation expense." The mileage figure is also based upon a study as to the cost of operation over a reasonable period of time rather than a cost of operation based upon a limited period which does not adequately reflect the actual overall cost of operating a motor vehicle, but rather looks at such cost in a vacuum.

The petitioners refer again to this Court's decision in *Shea* v. *Vialpando*, 416 U.S. 251 (1974). In addition to allowing the additional cost of alimony and child support payments ordered by courts, garnishment of wages, city earning taxes, and child care costs, the state of Missouri automatically allows a personal standard work-related expense deduction of up to $30.00, depending upon the amount

of adjusted gross income of the applicant or recipient, to cover, among other things, the cost of transportation, clothing and lunches. In addition to the personal standard, Missouri AFDC recipients and applicants can choose to itemize, among other expenses, the expenses of personal transportation, at 17¢ per mile, lunch expense, at $1.00 per day and uniforms and special shoes at their actual cost. The Colorado regulation at issue in *Shea* did not allow for such an itemization. In reaching its decision invalidating the Colorado regulation creating a standard deduction as the absolute maximum work-related expense allowed, this Court reasoned as follows:

> "By its terms, § 402(a)(7) requires the consideration of 'any' reasonable work expenses in determining eligibility for AFDC assistance. In light of the evolution of the statute and the normal meaning of the term 'any' we read this language as a congressional directive that no limitation, *apart from that of reasonableness,* may be placed upon the recognition of expenses attributable to the earning of income. Accordingly, *a fixed work expense allowance* which does not permit deductions for expenses in excess of that standard is directly contrary to the language of the statute." 416 U.S. at 260 (Emphasis added).
>
> "It is, of course, not the adoption of a standarized work expense allowance per se which we hold to be violative of § 402(a)(7) of the Act, but the fact that the standard used by Colorado is in effect a maximum or absolute limitation upon the recognition of such expenses. As the Court of Appeals correctly observed, a standard allowance would be permissible, and would substantially serve petitioners' interest in administrative efficiency, if it provided for individualized consideration of expenses in excess of the personal standard. [Citations omitted]. Such a standard allowance

would comport fully with the statutory requirement that any *reasonable* work expenses be considered and would allow individualized treatment where necessary." 416 U.S. at 264-265 (Emphasis added).

It should be clear that the *Shea* court was confronted with a substantially different issue than was present in the instant case. Missouri's personal standard work-expense deduction, of the same dollar amount as that present in the defective Colorado regulation, automatically provides a work-related expense deduction for AFDC applicants and recipients. However, those applicants and recipients have available the option of itemizing such work-related expenses as personal transportation, lunches, and uniforms and special shoes. The *Shea* opinion does clearly demonstrate, however, what the precise issue in this case should be. That is, does the method provided by Missouri to itemize the expenses of producing income, when they exceeded the personal standard, comport with the reasonableness requirement of 42 U.S.C. §602(a)(7)? The petitioners submit that this question must be answered in the affirmative.

This question is a significant one to Missouri and the numerous other states who follow procedures similar or identical to the Missouri procedure. At least sixteen states follow a procedure allowing a standard mileage amount to cover transportation expense in this area. At least twenty-four states require that before a working AFDC recipient/applicant may deduct the cost of clothing as a work-related expense, the clothing must be either a uniform or special shoes required by the employment. Most states do not appear to allow any additional deduction for the cost of lunch beyond that included in the basic grant. The procedures followed by Missouri and other states for handling deductions for work-related expenses pursuant to 42 U.S.C.

§602(a)(7) were adopted subsequent to this Court's opinion in the case of *Shea* v. *Vialpando,* and with the expressed approval of the United States Department of Health, Education and Welfare. Therefore, the petitioners urge this Court to grant certiorari in the instant case because it involves an important question of federal law which has not been, but should be, settled by this Court.

II.

The decision below refusing to consider the position and practice of the Department of Health, Education and Welfare when interpreting the meaning to be given to the provisions of 42 U.S.C. §602(a)(7) relating to deductions allowable for transportation, clothing and lunch expenses of working AFDC recipients/applicants, is in conflict with applicable decisions of this Court.

The Department of Health, Education and Welfare approved the Missouri AFDC plan under consideration here while aware of this state's policies with respect to personal transportation, lunch and uniform expenses. In addition, Mr. Burt Launius, State Program Officer for the Midwest Region of HEW, testified that standard meal allowances and standard mileage reimbursement for personal transportation were considered by HEW as reasonable methods for a state to provide for the deduction of work-related expenses. He also testified as to HEW's approval of Missouri's uniform policy, stating in addition that deductions for clothing that could be worn in other than work conditions would meet HEW audit resistance.

In *Shea* v. *Vialpando,* 416 U.S. 251 (1974) this Court did not consider HEW's expressed position with respect to the challenged Colorado regulation. That was understandable. Colorado did not provide for the work expenses reasonably attributable to the earning of income, but, to

the contrary, that state grouped all such expenses into a $30.00 maximum standard without any attempt to create exceptions, standard or otherwise. In this case, the issue is considerably different. Missouri allows AFDC recipients to itemize personal transportation, lunch and uniform expenses. The question is whether Missouri's method of allowing that itemization is reasonable. Congress provided no definition for the term "reasonably attributable to the earning of income" used in Title 42 U.S.C. §602(a)(7). HEW also failed to define that term for the states in its regulations promulgated pursuant to the Social Security Act. Therefore, it is only reasonable to look toward and afford deference to the position and practice of the Department of Health, Education and Welfare, which is required by law to administer the AFDC program. As this Court observed in *Southwestern Sugar & Molasses, Co.* v. *River Terminals Corporation,* 360 U.S. 411 (1959), to hold that an issue is:

> "[U]ltimately for judicial rather than administrative resolution . . . does not mean that the courts must therefore deny themselves the enlightment which may be had from a consideration of the relevant . . . facts which the administrative agency charged with regulation of the transaction is peculiarly well equipped to marshall and initially to evaluate. . . ."

See also, *Far East Conference* v. *United States of America,* 342 U.S. 570 (1952); *Rosado* v. *Wyman,* 397 U.S. 397 (1970); and *Mathews* v. *Eldridge,* 424 U.S. 319 (1976).

As this Court pointed out in the case of *Volkswagenwerk Aktiengesellschaft* v. *Federal Maritime Commission,* 390 U.S. 261 (1968):

> "The construction put on a statute by the agency charged with administering it is entitled to deference by the courts, and ordinarily that construction will

> be affirmed if it has a 'reasonable basis in law.' NLRB v Hearst Publications, 322 U.S. 111, 131, 88 L ed 1170, 1185, 64 S Ct 851 [(1941)]; . . ." *Id.* at 272.

In the instant case the courts below refused to consider the interpretation placed upon 42 U.S.C. §602(a)(7) by the Department of Health, Education and Welfare in the area of work-related expenses for personal transportation, clothing and lunches. Missouri and numerous other states have, of course, followed the interpretation provided by the Department of Health, Education and Welfare and relied upon that agency's approval of their various plans regarding the allowance of deductions for work-related expenses in the areas of transportation, clothing and lunches. The petitioners believe that the lower courts' refusal to give deference to the position and practice of the Department of Health, Education and Welfare with regard to these expenses is clearly in conflict with the above-cited decisions of this Court.

III.

The decision below awarding attorneys' fees on appeal presents an important question of federal law which should be settled by this Court, i.e., **does 42 U.S.C. §1988 authorize the federal courts of appeal to award attorneys' fees.**

On May 16, 1980, in response to the respondents' motion for an award of attorneys' fees, the court below awarded $1,500 in attorneys' fees in connection with the appeal of this case.

Neither 42 U.S.C. §1988 nor any other federal statutory provision expressly authorizes the federal courts of appeal to award attorneys' fees. Without such expressed authorization, the authority to award such fees does not exist. *Alyeska Pipeline Service Co.* v. *Wilderness Society,* 421 U.S. 420 (1975). Section 1988, by its specific terms, confers

jurisdictional powers only upon the district courts, including the discretion to award attorneys' fees to prevailing parties.

The United States Court of Appeals for the Eighth Circuit has, as a routine matter, been awarding attorneys' fees on appeal claiming jurisdiction to do so under §1988. Unless this Court addresses, for the first time, whether §1988 permits the federal courts of appeal to award attorneys' fees, it must be assumed that the Eighth Circuit will continue to make such awards without authority or jurisdiction.

IV.

The decision below that attorneys' fees could be awarded in a case decided under the Supremacy Clause, presents an important question of federal law which has not been, but should be, settled by this Court.

This case was decided by the District Court based upon the provisions of 42 U.S.C. §602(a)(7). The Court found that the Missouri regulations in question were contrary to the provisions of this federal statute. The primary thrust of the appellees' case at the District Court level and the only basis for their position in the appellate court was their statutory claim. The Court of Appeals in a one-page opinion affirmed the decision of the District Court based upon the latter's opinion. The District Court specifically found it unnecessary to reach appellees' constitutional claims because it was able to dispose of the case entirely upon the statutory grounds.

The petitioners submit that the constitutional or fee claim allegedly raised by the respondents in this case was clearly insubstantial. The respondents' allegation that the challenged Missouri regulation was in violation of the Equal Protection and Due Process Clauses was totally without

merit. Such case law as exists, in support of the proposition that a prevailing party on a non-fee claim may recover attorneys' fees, affirmatively requires that the fee claim, joined with the statutory non-fee claim, present a substantial constitutional question. *Gagne* v. *Mahre*, 594 F.2d 336 (2nd Cir. 1979); *Seals* v. *Quarterly County Court of Madison County, Tennessee*, 562 F.2d 390 (6th Cir. 1977).

The petitioners submit that the respondents' constitutional claim, supposedly based upon the due process and equal protection clauses, was wholly insubstantial. It is ludicrous to even suggest that the respondents could have prevailed at the District Court level or in the Court of Appeals on a claim brought solely, and adjudicated solely, upon a provision cognizable as a basis for fees under 42 U.S.C. §1988. Nonetheless, the Court of Appeals allowed the respondents fees of $1,500 in this case.

In *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U.S. 420 (1975), this Court reaffirmed the American Rule, *i.e.*, that prevailing litigants are not ordinarly entitled to collect reasonable attorneys' fees from the losers. The Court went on to declare that only in such cases where Congress has specifically carved out statutory exceptions to the general rule with respect to attorneys' fees awards do the federal courts have authority to award attorneys' fees. Congress passed the Fees Award Act in reaction to the Supreme Court's decision in *Alyeska Pipeline*. Congress did not include the Supremacy Clause, the Federal Declaratory Judgment Act, or the Social Security Act.

This Court has not decided that awards of attorneys' fees are proper in declaratory judgment cases, finding conflicts between federal statutory laws and state regulations, under the Supremacy Clause. Likewise, 42 U.S.C. §1988 does not justify such awards. The respondents may have cited §1983 in their pleadings and alleged a constitutional

claim, but relief was granted only upon a Supremacy Clause basis and it is clear that the respondents' alleged constitutional grounds was frivolous. The mere recitation of 42 U.S.C. §1983 and 28 U.S.C. §1343 as a jurisdictional basis should not justify an award of attorneys' fees. A decision by this Court on this issue would address a significant and wide-spread problem. States are increasingly being subjected to requests for attorneys' fees. Due to *Alyeska Pipeline,* 42 U.S.C. §1988 must be interpreted narrowly. The states are entitled to a pronouncement by this Court respecting the nature of cases which will qualify for attorneys' fees awards.

V.

The decision below, allowing the award of attorneys' fees to the respondents even though they were represented by publicly funded legal aid attorneys and thus incurred no expense for attorneys' fees in this action presents an important question of federal law which has not been, but should be, settled by this Court.

The Court of Appeals awarded the attorneys for the respondents a fee of $1,500 in connection with their work on the appeal of this case even though those attorneys were employed and salaried by a publicly funded legal corporation.

The purpose of the enactment of the Civil Rights Attorneys Fee Award Act was to provide for a monetary incentive making counsel available to "private attorneys general" seeking vindication of civil rights. That purpose is not fulfilled by an award of attorneys' fees to a public interest legal organization. Salaried attorney employees of legal aid organizations do not need, and would not receive even if attorneys' fees were awarded, an incentive to initiate lawsuits when it is part of their job, a job for

which they are paid from public funds. The award of attorneys' fees to the attorneys for the respondents in this case, where the very purpose of the Legal Services of Eastern Missouri, Inc., is to prosecute cases like this one, furthers no apparent legislative purpose. What it does do is grant legal aid agencies a windfall and a double-dip at public funds. See *Woolfolk* v. *Brown*, 358 F.Supp. 524 (E.D.Va. 1973); *Gaddis* v. *Wyman*, 336 F.Supp. 1225 (S.D.N.Y. 1972) and *Holtt* v. *Vitek*, 495 F.2d 219 (1st Cir. 1974).

The petitioners believe that a decision by this Court on the above issue would address a significant and widespread problem. States are involved in a considerable amount of litigation in which the opposing parties are represented by publicly funded legal aid attorneys. If the position of the Court of Appeals is allowed to stand numerous courts in this and other circuits will require states to pay fees to publicly funded legal counsel in numerous cases. The states are entitled to a pronouncement by this Court respecting whether or not publicly funded and salaried legal aid counsel are entitled to recover attorneys' fees under 42 U.S.C. §1988.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Eighth Circuit.

Respectfully submitted,

JOHN ASHCROFT
Attorney General

WILLIAM F. ARNET
Assistant Attorney General

MICHAEL L. BOICOURT
Assistant Attorney General

Supreme Court Building
P.O. Box 899
Jefferson City, Missouri 65102
314-751-3321

Attorneys for Petitioners.

June, 1980

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NO. 79-2006

LOU EMMA CHAMBLY, DENISE E. WILLIAMS, GEORGIA ANN LOEFFEL, CHRIS SCHOUE, and all others similarly situated,

Appellees,

v.

DAVID R. FREEMAN, Director, Missouri Department of Social Services. JOHN ZUMWALT, Director, Missouri Division of Family Services,

Appellants.

Appeal from the United States District Court for the Western District of Missouri

Submitted: April 15, 1980
Filed: April 24, 1980

Before STEPHENSON and McMILLIAN, Circuit Judges, and VIETOR,* District Judge.

ORDER

Upon a careful consideration of the record and of the briefs and arguments of the parties, this court has concluded that the judgment of the district court is based on findings of fact which are not clearly erroneous and that no error of law exists. We therefore affirm the decision of the dis-

*The Honorable Harold D. Vietor, United States District Judge for the Southern District of Iowa, sitting by designation.

trict court on the basis of its well-reasoned opinion, *see Chambly* v. *Freeman,* 478 F. Supp. 1221 (W.D. Mo. 1979).

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS,
EIGHTH CIRCUIT

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 79-2006 SEPTEMBER TERM, 1979

LOU EMMA CHAMBLY, et al.,
Appellees,

v.

DAVID R. FREEMAN, etc., et al.,
Appellants.

Appeal from the United States District Court for the Western District of Missouri

The Court having considered appellees' motion for award of attorneys' fees, together with appellants' suggestion in opposition thereto, it is now here ordered that the sum of FIFTEEN HUNDRED DOLLARS ($1,500.00) be awarded as appellees' attorneys' fees in the above case.

May 16, 1980.

APPENDIX C

UNITED STATES DISTRICT COURT, W. D. MISSOURI, C. D.

Nov. 1, 1979.

LOU EMMA CHAMBLY et al.,
Plaintiffs,

v.

DAVID R. FREEMAN et al.,
Defendants.

No. 79 4149 CV C.

A class suit was brought alleging that Missouri officials violated federal law in establishing absolute standardized deductions for work-related expenses in connection with determining qualification for AFDC benefits. The District Court, Elmo B. Hunter, J., held, inter alia, that violation of federal law was demonstrated.

Declaratory judgment entered.

1. Federal Civil Procedure 189

Class certification would be granted for suit in which welfare benefits claimants contended that Missouri officials violated federal law in not deducting all reasonably attributable work-related expense from gross amount of earned income when determining need for an amount of welfare benefits under aid to families with dependent children program. Social Security Act, § 402(a)(7), 42 U.S.C.A.

§ 602(a)(7); U.S.C.A.Const. Amends. 5, 14; Fed.Rules Civ. Proc. Rule 23(a), (a)(3), (b)(2), 28 U.S.C.A.

2. Social Security and Public Welfare 194.10

Missouri officials violated federal law and implementing regulations to the extent that they established absolute standardized deductions which did not permit individual offers of proof for food, clothing, and transportation expenses which might exceed standardized amounts and were reasonably attributable to production of earned income by AFDC applicants and recipients. Social Security Act, § 402 (a)(7), 42 U.S.C.A. § 602(a)(7); U.S.C.A.Const. Amends. 5, 14; Fed.Rules Civ.Proc Rule 23(a), (b)(2), 28 U.S.C.A.

Michael L. Lyons, Richard D. Chase, Legal Services of Eastern Mo., Inc., St. Charles, Mo., for plaintiffs.

William F. Arnet, Michael L. Boicourt, Asst. Attys. Gen., Jefferson City, Mo., for defendants.

OPINION AND ORDER

ELMO B. HUNTER, District Judge.

I.

This is an action in which plaintiffs[1] seek individually and on behalf of all other persons similarly situated declaratory and injunctive relief regarding defendants' practices of not deducting all reasonably attributable work related expenses[2] from the gross amount of earned income when determining the need for and the amount of welfare benefits under the Aid to Families with Dependent Children ("AFDC") program. Plaintiffs are alleging that defendants' policies are a violation of the Social Security Act, 42 U.S.C. § 602(a)(7), its implementing regulations, and the

Due Process and Equal Protection Clauses of the United States Constitution.

The case was fully tried to the Court on August 17, and September 6, 7, 1979. This Court has subject matter jurisdiction over this action.

II.

[1] Plaintiffs moved on September 6, 1979, for an order of this Court to certify this cause as a class action pursuant to Fed.R.Civ.P. 23(a) & 23(b)(2). The defendants did not file any objection to the certification motion.

In reviewing the standards for class action determinations, this Court concludes that this case may be maintained as a class action.

The class of persons affected by this litigation is very large. The defendants indicated that their best approximation of the number of employed heads of AFDC households for July, 1979, was 10,217.[3] Joinder of a group of this magnitude is clearly impracticable.

Further, plaintiffs are all raising the same question of law; i. e., whether the state policies in determining the allowability of certain work-related expense deductions is in contravention of applicable federal laws and pertinent sections of the United States Constitution. Also, the claims or defenses of the representative parties meet the typicality requirement of Rule 23(a)(3). Lastly, the Court has not been shown any reason why the representative parties do not fairly and adequately represent the class of persons in question.

The plaintiffs have sought declaratory and injunctive relief in this action, and as such, seek a class determination under Rule 23(b)(2). Rule 23(b)(2) mandates that the defendant must be in a posture of refusing to act on grounds generally applicable to the class. It appears to the Court

that defendants' challenged policies in the administration of Missouri's AFDC program adequately constitute the necessary refusal to act requirement of Rule 23(b)(2).

Therefore, the Court holds that this action may be maintained as a class action with the class defined as all employed Missouri citizens entitled to receive welfare benefits under the AFDC program.

III.

[2] The plaintiffs have alleged that defendants' policies with regard to the establishment of maximum standards for the deduction of work-related expenses violates 42 U.S.C. § 602(a)(7) and its implementing regulations, specifically 45 C.F.R. § 233.20(a)(7)(i). Basically, the pertinent sections of these provisions are as follows:

> "A state plan for aid and services to needy families with children must . . . (7) take into consideration . . . any expenses reasonably attributable to the earning of . . . income." 42 U.S.C. § 602(a)(7).
>
> Requirements for State Plans. A State Plan for . . . AFDC . . . must . . . (7) disregard of earned income. (i) Provide that the following method will be used for disregarding earned income: The applicable amounts of earned income to be disregarded will be deducted from the gross amount of 'earned income', and all work expenses, personal and non-personal, will then be deducted." 45 C.F.R. § 233.20(a)(7)(i).

The section of Missouri's AFDC Manual[4] drawn into question by this litigation is Chapter I, Section III, (f)(5).[5]

IV.

Lou Emma Chambly

Plaintiff Chambly is employed by the St. Louis Public Library as a Public Service Assistant. Her gross salary is

$795.00 per month. In addition, Ms. Chambly receives an AFDC grant of $188.00 per month for herself and her minor children. She also receives food stamps.

Ms. Chambly testified that she eats her lunch each working day at Jerry's Restaurant which is across the street from the downtown St. Louis Public Library facility. She further testified that she carefully maintains records of her luncheon expenditures. Her testimony indicated that her daily lunch expenses exceeded $.60 per day. On cross-examination, Ms. Chambly stated that there is no prohibition at the St. Louis Public Library against "brown bagging." Ms. Chambly testified that she prefers to eat lunch at Jerry's Restaurant.

The St. Louis Public Library maintains a dress code for their employees. In order to comply with the dress code requirements, Ms. Chambly testified that she purchases office-type clothing that she otherwise would not purchase. She stated that she wears "cut-offs and T-shirts" while at home and "disco" clothes when going out in the evenings. According to her testimony, neither of these two clothing styles would be appropriate for her place of employment. Also, she testified that she does not wear her "work" clothes at times other than when she is at work or enroute to work. She spends approximately $30.00 a month for clothing related to her employment. Ms. Chambly acknowledged that nothing would prevent her from wearing her work clothes to functions other than her employment.

Chris Schoue

Plaintiff Schoue resides in Columbia, Missouri. She lives with her 5 year old child. Her employment as a secretary is with MFA Insurance Co., and her gross pay is $230.00 every two weeks. She works 8 a.m. to 5 p.m. Mondays through Fridays and receives 8-10 hours of overtime work

each month. Since July, 1979, she is receiving $43.00 per month through AFDC. She receives no food stamps.[6]

Ms. Schoue testified that she commutes 23 miles round-trip each day to her job. On cross-examination, she indicated mileage of 530 miles for July, 1979 with 43 miles for non-work-related travel. Ms. Schoue owns a 1968 Pontiac Le-Mans automobile that she testified operates for 9—10 miles on a gallon of gasoline. In the six months prior to July, 1979, Ms. Schoue testified that she has spent $650.00 in repairs on the automobile. She stated that if it was not for her job, she would sell the automobile.[7]

Meal expenses for Ms. Schoue amount to $1.50 per working day. She testified that she eats at Hardee's Hamburger Restaurant, although there is no prohibition against employees bringing their lunch to MFA Insurance Co.

In regards to her work clothing, Ms. Schoue stated that she had been told of a dress requirement when she began her employment at MFA Insurance Co. Basically, she testified that she can dress "casually, but neat." In conjunction with this requirement, Ms. Schoue said she bought many items to wear to work, and that she never wears these "work clothes" for other purposes.

Georgia Ann Loeffel

Plaintiff Loeffel resides in Fenton, Missouri, and is employed by St. Luke's Hospital West in St. Louis County, Missouri. She works as a lab assistant Mondays through Fridays from 8:30 a.m. to 4:30 p.m. She has one child aged 9 years. She testified that her take-home pay is approximately $260.00 every two weeks. She stated that her application for AFDC benefits was denied and that she receives no food stamps. Ms. Loeffel's testimony revealed that she drives 34 miles round-trip each day from her mobile home to her employment. She drives a 1977 Ford Pinto automo-

bile. She stated that her costs of operation for the automobile are quite high due to a $738.00 per year high risk insurance premium that she must pay.

St. Luke's Hospital does not require uniforms for persons in Ms. Loeffel's position. Hence, Ms. Loeffel testified that she must purchase pants and blouses for her employment. She stated that 10% of the utilization of these clothes is for nonwork-related purposes.

V.

The state of Missouri voluntarily participates in the AFDC program.[8] As such, the state is bound to adhere to federal law governing the operation of the program. *See, Rosado* v. *Wyman,* 397 U.S. 397, 90 S.Ct. 1207, 25 L.Ed.2d 442 (1970); and *King* v. *Smith,* 392 U.S. 309, 88 S.Ct. 2128, 20 L.Ed.2d 1118 (1968).

The substantive provisions of 42 U.S.C. § 602(a)(7) of the Social Security Act were closely scrutinized by the Supreme Court in *Shea* v. *Vialpando,* 416 U.S. 251, 94 S.Ct. 1746, 40 L.Ed.2d 120 (1974). There, the Court held invalid a Colorado regulation that established a uniform allowance for work-related expenses taken as a whole. The facts in *Shea* differ from the facts before this Court to the extent that the infirm Colorado regulation did not permit any itemization for categories of work-related expenses. Nevertheless, the basic thrust of the challenge in *Shea* was directed against a standard allowance that did not permit AFDC applicants to demonstrate higher expenses,[9] which is essentially analogous to the situation in this action. Here, Missouri allows for itemization of work related expenses,[10] but has established absolute limitations on the amounts of the expense deductions in some categories, namely food, clothing and transportation.[11]

The defendants argued that the issue in this case in light of *Shea* is whether the standardized maximum allow-

ances in each itemized category are reasonable.[12] This Court can not agree with the defendant's characterization of *Shea*. The import of the holding in *Shea* is that a standard allowance is permissible, but the standardized figure can not serve as a maximum limitation on the amount of expenses an individual AFDC applicant may be able to show. The defendants are not violating § 602(a)(7) by utilizing standard work expense deduction figures. Rather, defendants are violating the mandates of the statute by not allowing AFDC applicants an opportunity to prove that they have reasonable expenses in excess of the standardized maximums. *Shea* v. *Vialpando, supra; See also, Anderson* v. *Graham,* 492 F.2d 986 (8th Cir. 1973); *Perez* v. *Chang,* 438 F.Supp. 238 (D.Haw. 1977); *Fones* v. *Percy,* No. 78—C—191 (W.D. Wis.1978), *aff'd.,* 601 F.2d 600 (7th Cir. 1979).[13]

While the defendants' evidence tended to show the reasonableness of the standard deductions in other contexts,[14] such evidence simply is not relevant so an interpretation of the requirements of § 602(a)(7).[15] This Court notes that efficient management of governmental services requires statistical averages in many situations. But, the Supreme Court in *Shea* made clear that the intent of Congress in passing § 602(a)(7) was to insure *individualized* treatment for needy citizens. 416 U.S. 251 at 261, 94 S.Ct. 1746, 40 L.Ed.2d 120.

Indeed, much of the defendants' argument is to the effect that allowing AFDC applicants to show their true work-related expenses would create tremendous difficulties in terms of administrative efficiency.[16] Mr. John Zumwalt, Director of the Missouri Division of Family Services, testified that adopting a "case by case" verification procedure would be "unworkable". This argument seems to lack merit in light of defendants' regulation that currently *requires* verification of work-related expenses when the

claimed expenses do not seem reasonable to the caseworker. *See,* Missouri AFDC Manual, Chapter I, Section III, (f)(5).

The determination of eligibility given the nature of the AFDC program is necessarily a case by case process. In that the defendants are not barred under *Shea* from utilizing standardized work expense deductions for those applicants who choose not to attempt to show expenses in excess of the standard amounts, the additional burden of allowing that class of applicants who choose to demonstrate to the satisfaction of defendants that their expenses are higher does not seem appreciably greater than the verification procedures already in effect.

Whatever the merits of the defendants' administrative convenience arguments, the Supreme Court in *Shea* indicated that the clear expression of congressional intent requiring consideration of any expenses reasonably attributable to the earning of income necessitates rejection of any state claim of administrative convenience. 416 U.S. 251 at 265 n. 13, 94 S.Ct. 1746, 40 L.Ed.2d 120.

VI.

This Court finds it unnecessary to reach the constitutional claims of plaintiffs given that the statutory grounds here are dispositive. *See, Shea* v. *Vialpando, supra,* and *Hagans* v. *Lavine,* 415 U.S. 528, 94 S.Ct. 1372, 39 L.Ed.2d 577 (1974).

ORDER

Upon careful consideration of the issues presented in this action, it is hereby

ORDERED that a judgment be issued declaring that defendants have violated 42 U.S.C. § 602(a)(7) and its implementing regulations insofar as defendants have established absolute standardized deductions which do not permit individual offers of proof for food, clothing and transportation expenses which may exceed the standardized amounts and are reasonably attributable to the production of earned income by AFDC applicants and recipients. It is further

ORDERED that the defendants are hereby enjoined from violating 42 U.S.C. § 602(a)(7) by enforcing those portions of Missouri Division of Family Services' Manual, Chapter I, Section III, (f)(5), insofar as the regulations establish absolute standardized deductions which do not permit individual offers of proof for food, clothing and transportation expenses which may exceed the standardized amounts and are reasonably attributable to the production of earned income by AFDC applicants and recipients.

IT IS SO ORDERED.

FOOTNOTES

[1]Named plaintiff Denise E. Williams moved to dismiss her complaint at trial and her motion was granted.

[2]The plaintiffs have focused their challenge in this action upon defendants' work-related expense deduction policies for food, clothing and transportation. *See,* pp. 3 & 16 of plaintiffs' Post-Trial Brief.

[3]*See,* Defendants' Answer to Plaintiffs' Interrogatory No. 1.

[4]Missouri's AFDC Manual is composed of the State's operating procedures for the AFDC program.

[5]In relevant part, this section allows for an AFDC claimant to deduct "actual personal work related expenses" in excess of the "personal standard" which is a standard deduction of $30.00 allowed for monthly work-related expenses like "clothing (such as uniforms and special shoes, etc.), transportation, lunches, union dues, mandatory retirement, etc." If the applicant elects to claim actual expenses, then the applicant must fill out Form IM-2C which categorizes the claimed expenditures. The regulation is facially clear that only clothing expenditures for uniforms and special shoes can be claimed. Further, transportation expenses are allowed at a maximum rate of 15 cents per mile if the applicant uses a private automobile to travel to and from work. Meal expenses incurred because of employment are limited to a standard 60 cent deduction. If these expenditures exceed the "personal standard" deduction of $30.00, then the difference between the $30.00 figure and what is actually spent is allowed (subject to the previously indicated limitations).

The regulation also requires that the caseworker seek verification of the claimed expenses where "practical to do so" and in all cases the expenses must be explained. Further, if the claimed expenses do not seem reasonable in the caseworker's judgment, then "verification must be provided."

[6]The Court notes the devastating effect of the high rate of inflation upon persons engaged in minimum wage occupations. It is an unfortunate situation when a person like Ms. Schoue who works well in excess of 50 hours each week can not earn enough to support herself and her one child without financial assistance in the form of public welfare.

[7]Ms. Schoue's testimony indicated that public transportation is not available in Columbia, Missouri, from her home to her employment.

[8]*See,* Stipulation, filed August 17, 1979.

[9]The Supreme Court in an unanimous opinion construed the issue in *Shea* as follows:

> "We granted certiorari . . . to determine whether, in light of [§ 602 (a)(7)], a State may adopt a standardized allowance for expenses attributable to the earning of income which does not allow an applicant to deduct expenses that exceed the standard. We hold that it may not." 416 U.S. 251 at 252, 94 S.Ct. 1746 at 1749-1750, 40 L.Ed.2d 120.

[10]For example, the Missouri AFDC Manual, Chapter I, Section III, (f)(1—4), indicates that alimony and child support payments, wage garnishments, city earnings taxes, and child care costs are all completely deductible.

[11]With regard to clothing expenses, the limitation is an absolute prohibition, except for uniforms or special shoes expenses which are allowed at their actual costs.

[12]To support their reading of *Shea*, the defendants point to the following language in the opinion:

> "By its terms, [§ 602(a)(7)] requires the consideration of 'any' reasonable work expenses in determining eligibility for AFDC assistance. In light of the evolution of the statute and the normal meaning of the term 'any', we read this language as a congressional directive

that no limitation, apart from that of reasonableness, may be placed upon the recognition of expenses attributable to the earning of income. Accordingly, a fixed work-expense allowance which does not permit deductions for expenses in excess of that standard is directly contrary to the language of the statute.

Standardized treatment of employment-related expenses without provision for demonstrating actual and reasonable expenses in excess of that standard amount, such as Colorado has adopted, threatens to defeat the goal Congress sought to achieve in adopting the mandatory work-expense recognition provisions of [§ 602(a)(7)]. By limiting employment expenses to $30 per month, the Colorado regulation results in a disincentive to seek or retain employment for all recipients whose reasonable work-related expenses exceed or would exceed that amount. Accordingly, the Colorado regulation conflicts with federal law and is therefore invalid.

It is, of course, not the adoption of a standardized work-expense allowance per se which we hold to be violative of [§ 602(a)(7)] of the Act, but the fact that the standard used by Colorado is in effect a maximum or absolute limitation upon the recognition of such expenses. As the Court of Appeals correctly observed, a standard allowance would be permissible and would substantially serve petitioners' interests in administrative efficiency, if it provided for individualized consideration of expenses in excess of the standard amount [citations]. Such a standard allowance would comport fully with the statutory requirement that any reasonable work expenses be considered, and would allow individualized treatment where necessary." 416 U.S. 251 at 260, 264 & 265, 94 S.Ct. 1746 at 1755-1756, 40 L.Ed.2d 120.

[13]Mr. Bert Lanius of the Kansas City Office of the Department of Health, Education and Welfare ["HEW"] testified that HEW had approved of the Missouri AFDC plan in 1976. In *Shea*, the Supreme Court declined to grant any deference to administrative practice in view of the clarity of the statutory requirements in § 602(a)(7), 416 U.S. 251 at 262, 263 n. 11, 94 S.Ct. 1746, 40 L.Ed.2d 120.

[14]Mr. Gerald Yarrington, a representative of the Division of Accounting for the state of Missouri testified that state employees are paid 17 cents per mile for use of their personal automobiles when engaged in official business. Also, defendants noted in their Post-Trial Brief that the Internal Revenue regulations allow 17 cents per mile as a deduction for business related travel.

[15]*See*, Judge Doyle's opinion in *Fones* v. *Percy*, No. 78—C—191 (W.D. Wis. 1978), *aff'd.*, 601 F.2d 600 (7th Cir. 1979).

[16]Mr. Lanius testified that Missouri's "error rate" in administering its AFDC program was 10%. In his opinion, the adoption of a receipt verification system would cause an increase in the error rate by 3% which could lead to a penalty reduction in federal financial participation in Missouri's program.

No. 79-1953

Supreme Court, U. S.
FILED
JUL 10 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

DAVID R. FREEMAN, Director of the Department of Social Services of the State of Missouri, and JOHN ZUMWALT, Director of the Division of Family Services, Department of Social Services of the State of Missouri,
Petitioners,

VS.

LOU EMMA CHAMBLY, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

MICHAEL L. LYONS,
Legal Services of Eastern Missouri, Inc.
216 North Third Street
St. Charles, Missouri 63301
(314) 946-2221

RICHARD CHASE
Legal Services of Eastern Missouri, Inc.
3684 Lindell Boulevard
St. Louis, Missouri 63108
(314) 534-8810
Attorneys for Respondents

July, 1980

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

INDEX

Opinions Below 1

Jurisdiction 2

Questions Presented 2

Statutes and Federal Regulations Involved 3

Statement of the Case 4

Argument -

I. The Court of Appeals' decision correctly interprets 42 U.S.C. §602(a)(7) and this Court's decision in *Shea* v. *Vialpando*, 416 U.S. 251 (1974) 7

II. The Court of Appeals' decision refusing to defer to HEW's interpretation of 42 U.S.C. §602(a)(7) is not in conflict with prior decisions of this Court 10

III. The award of attorneys' fees by the Court of Appeals is not erroneous and neither conflicts with prior decisions of this Court nor with prior decisions of other Circuit Courts of Appeals 11

IV. The award of attorneys' fees to legal services attorneys by the Court of Appeals is not erroneous and does not conflict with prior decisions of other Circuit Courts of Appeals 12

V. The award of attorneys' fees pursuant the Attorney's Fees Awards Act of 1976, 42 U.S.C. §1988, in a case where a state regulation is found to be inconsistent with the Social Security Act and a substantial constitutional question is alleged is not erroneous and is not in conflict with decisions of this Court or other Circuit Courts of Appeals 13

Conclusion 16

Appendix 1 ..... A-1

AUTHORITIES

Cases:

Bonds v. Stanton, 555 F2d 172 (7th Cir. 1977) 14

Bonnes v. Long, 599 F2d 1316 (4th Cir. 1979) 12,13

Brandenberger v. Thompson, 494 F2d 885 (9th Cir. 1974) 12

Brown v. Stanton, 617 F2d 1224 (7th Cir. 1980) 12

Davis v. Murphy, 587 F2d 362 (7th Cir. 1978) 12

Dennis v. Chang, 611 F2d 1302 (9th Cir. 1980) 12

Far East Conference v. United States of America, 342 U.S. 570 (1952) 10

Fones v. Percy, No. 78-C-191 (W.D. Wisc., December 7, 1978), *aff'd* 601 F2d 600 (7th Cir. 1979) 9

Gaddis v. Wyman, 336 F. Supp. 1225 (S.D.N.Y. 1972) . 13

Gagne v. Maher, 594 F2d 336 (2d Cir. 1979) 15

Gore v. Turner, 563 F2d 159 (5th Cir. 1977) 12

Green v. Ten Eyck, 572 F2d 1233 (8th Cir. 1978) 12

Hagans v. Lavine, 415 U.S. 528 (1974) 14,15

Hairston v. R & R Apartments, 510 F2d 1090 (7th Cir. 1975) 12

Hoitt v. Vitek, 495 F2d 219 (1st Cir. 1974) 13

Holly v. Levine, 605 F2d 638 (2d Cir. 1979) 12

Hutto v. Finney, 437 U.S. 678 (1978) 11

Incarcerated Men of Allen County Jail v. Fair, 507 F2d 281 (6th Cir. 1974) 12

Kimbrough v. Arkansas Activities Association, 574 F2d 423 (8th Cir. 1978) 14

Lund v. Affleck, 587 F2d 75 (1st Cir. 1978) 12,14

Maher v. Gagne, No. 78-1888 (U.S. Supreme Court, decided June 25, 1980) 14

Maine v. Thiboutot, No. 79-838 (U.S. Supreme Court, decided June 25, 1980) 16

Mathews v. Eldridge, 424 U.S. 319 (1970) 10

Mid Hudson Legal Services, Inc. v. G+U, Inc. 578 F2d 34 (2d Cir. 1978) 12,13

Oldham v. Ehrlich, 617 F2d 163 (8th Cir. 1980) 12

Perez v. Chang, 438 F. Supp. 238 (D. Haw. 1977) 9

Rodriquez v. Taylor, 569 F2d 1231 (3rd Cir. 1977) 12

Rosado v. Wyman, 397 U.S. 397 (1970) 10

Seals v. Quarterly Country Club, 562 F.2d 390 (6th Cir. 1977) 14

Shea v. Vialpando, 416 U.S. 251 (1974) 6,7,8,9

Southwestern Sugar and Molasses Co. v. River Terminals Corporation, 360 U.S. 411 (1959) 10

Vasquez v. Fleming, 617 F2d 334 (3rd Cir. 1980) 11

Volkswagenwerk Aktiengesellschaft v.Federal Maritime Commission, 390 U.S. 261 (1968) 10

Woolfolk v. Brown, 358 F. Supp. 524 (E.D. Va. 1973) .. 13

Constitutional Provisions:

United States Constitution

Supremacy Clause (Article VI, Clause 2)
Fourteenth Amendment 4,14,15

Statutes:

42 U.S.C. §602(a)(7) 2,3,4,6,7,8,9,10,11

42 U.S.C. §1988 2,3,11,13

Regulations:

45 C.F.R. §233.20(a)(7)(i) 2,3,4,7

No. 79-1953

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

DAVID R. FREEMAN, Director of the Department of Social Services of the State of Missouri, and JOHN ZUMWALT, Director of the Division of Family Services, Department of Social Services of the State of Missouri,
Petitioners,

vs.

LOU EMMA CHAMBLY, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

The Brief of respondents LOU EMMA CHAMBLY, CHRIS SCHOUE, and GEORGIA ANN LOEFFEL is in opposition to the petition for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit filed on June 11, 1980, by petitioners DAVID R. FREEMAN and JOHN ZUMWALT.

OPINIONS BELOW

The opinion of the Court of Appeals and the order of the Court of Appeals awarding fees to respondents' attorneys are reproduced in Petitioners' Appendices A and B. The opinion of the District Court is reproduced in petitioners' Appendix C and is reported at 478 F. Supp. 1221 (W.D. Mo. 1979).

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

QUESTIONS PRESENTED

1. Whether Missouri's policy of establishing maximum standard deductions for the work-related transportation, clothing, and meal expenses of AFDC applicants and recipients violates the Social Security Act, 42 U.S.C. §602(a)(7), and the implementing regulations, 45 C.F.R. §233.20(a)(7)(i), by prohibiting the showing of actual expenses in excess of the maximum standard deductions.

2. Whether the Court should defer to the position and practice of the Department of Health, Education and Welfare (HEW) when interpreting the meaning to be given the provisions of 42 U.S.C. §602(a)(7) relating to deductions allowable for the work-related transportation, clothing and lunch expense of AFDC applicants and recipients.

3. Whether the Attorney's Fees Awards Act of 1976. 42 U.S.C. §1988, confers upon federal courts of appeals the authority to award attorneys' fees to prevailing parties for services rendered before the appellate courts.

4. Whether the Attorney's Fees Awards Act of 1976, 42 U.S.C. §1988, authorizes the award of attorney's fees to prevailing parties who are represented by publicly funded legal aid attorneys.

5. Whether the Attorney's Fees Awards Act of 1976, 42 U.S.C. §1988, authorizes the award of attorney's fees in a case where a state regulation is found to be inconsistent with a provision of the Social Security Act, 42 U.S.C. §602(a)(7), when a substantial constitutional claim is alleged.

STATUTES AND FEDERAL REGULATIONS INVOLVED

42 U.S.C. §602(a)(7) provides:

> [T]he State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming Aid to Families with Dependent Children or of any other individual (living in the same home as such child or relative) whose needs the State determines should be considered in determining the needs of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income . . .

45 C.F.R. §233.20(a)(7)(i) states:

> Provide that the following method will be used for disregarding earned income: The applicable amounts of earned income to be disregarded will be deducted from the gross amount of "earned income", and all work expenses, personal and non-personal, will then be deducted. Only the net amount remaining will be applied in determining need and the amount of the assistance payment.

42 U.S.C. §1988 provides:

> [I]n any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or in any civil action or proceeding, by or on behalf of the United States of America, to enforce or charging a violation of, a provision of the United States Internal Revenue Code, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

STATEMENT OF THE CASE

The facts of the case are stated more fully in the opinion of the District Court, 478 F. Supp. at 1223-1224 (Petitioners' Appendix C, A7-A10).

Plaintiffs-Respondents CHAMBLY, SCHOUE and LOEFFEL and the class they represent are employed heads of needy families who are entitled to receive Aid to Families with Dependent Children (AFDC) benefits. Their AFDC benefits have been wrongfully reduced or denied because of Defendants-Petitioners' policy of establishing maximum standard deductions for the work-related transportation, clothing and meal expenses of AFDC applicants and recipients.

In their complaint, respondents alleged that petitioners' policy of not allowing deductions for work-related expenses in excess of their maximum standards violated the Social Security Act, 42 U.S.C. §602(a)(7); the implementing regulations, 45 C.F.R. §233.20(a)(7)(i); and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. Jurisdiction was based upon 28 U.S.C. §§1331 and 1343(3) and (4).

At the time of trial, Missouri allowed employed AFDC applicants and recipients a maximum deduction of $0.60 per meal for lunch, $0.15 per mile for transportation, and no deduction for clothing other than uniforms or special shoes.

All of the respondents incurred reasonable actual lunch expenses in excess of petitioners' maximum, yet they did not receive any deduction for this expense. For example, respondent CHAMBLY ate lunch each day at the least expensive eating place in the area where she worked[1] and yet incurred work-related lunch expenses of $1.80 per day or $40.10 per month.

---

[1]Petitioners' policy authorized AFDC recipients to eat lunch at restaurants.

Nonetheless, respondent CHAMBLY received the maximum deduction of only $0.60 per meal, or $13.00 per month. Respondent SCHOUE had a meal expense because of her employment. She ate lunch every day at the same place and she always ate a hamburger and coke which cost her $1.50 per day. The restaurant where she ate lunch was the least expensive restaurant in the area. Nonetheless, respondent SCHOUE received the maximum deduction of only $0.60 per meal.

Respondents SCHOUE and LOEFFEL incurred work-related transportation expenses of $0.20 per mile and $0.29 per mile, respectively.[2] However, because of petitioners' policy, they received a deduction of only $0.15 per mile for transportation expenses on their AFDC budgets.

Respondent CHAMBLY incurred a monthly expense of $23.80 for clothing required by her employer's written dress code. She wore this clothing only while working. Nevertheless, respondent CHAMBLY did not receive any deduction for this expense due to petitioner's policy restricting clothing deductions to uniforms and special shoes.

Petitioners dispute the reasonableness of respondents' work-related transportation, meal and clothing expenses. While respondents contend that their expenses are reasonable, this is not an issue which needs to be judicially determined. Once it is determined that AFDC applicants and recipients can claim work-related expenses in excess of the maximum standards, then the reasonableness of the claimed expenses should be decided administratively in the same manner as other eligibility determinations.

---

[2]Respondent SCHOUE had work-related transportation expenses in excess of the state standard, in part because she had substantial repair bills for her eleven year old car. Respondent LOEFFEL also had transportation expenses which exceeded the state standard due in part to high car insurance bills.

Petitioners also emphasize that their practice is followed by a number of other states. However, it should be noted that there are states that permit recipients verification of the actual, reasonable work-related expenses in the areas which are involved in this case.[3] For example, Minnesota allows a deduction of $0.10 per mile for work-related transportation expenses, but permits AFDC recipients to verify greater expenses. Minnesota also provides a standard deduction of $1.00 per day for lunch, but permits recipients to prove greater actual expenses. Indiana allows a standard deduction of $0.60 per day for meal expenses, but AFDC recipients may show higher actual expenses.

The District Court, in its opinion and order dated November 1, 1979, held that petitioners' policy violated 42 U.S.C. §602(a)(7) and this Court's holding in *Shea* v. *Vialpando,* 416 U.S. 251 (1974), by denying AFDC applicants and recipients an opportunity to show that they have incurred reasonable work related expenses in excess of the maximum standard deductions for transportation, meals and clothing. The District Court noted in its opinion, and respondents readily acknowledge, that petitioners may establish standards, but if they choose to do so they must allow AFDC applicants and recipients an opportunity to prove that they have reasonable expenses in excess of standardized maximums.

On April 24, 1980, the United States Court of Appeals for the Eighth Circuit issued an order affirming the judgment of the District Court based upon the opinion of the lower court.

On May 16, 1980, the Court of Appeals awarded respondents $1500.00 in attorney's fees.

---

[3]Nevada, Delaware, Wisconsin, Indiana, West Virginia, Oklahoma, Massachusetts, New Jersey and Minnesota allow actual transportation expenses to be deducted. At least five states allow applicants and recipients to deduct actual meal expenses (Maryland, Minnesota, Nevada, Wisconsin and Oklahoma).

ARGUMENT

I

The Court Of Appeals Decision Correctly Interprets 42 U.S.C. §602(a)(7) And This Court's Decision In Shea v. Vialpando, 416 U.S. 251 (1974).

Petitioners argue that the decision below misinterprets 42 U.S.C. §602(a)(7) and this Court's decision in *Shea* v. *Vialpando,* 416 U.S. 251 (1974), and therefore involves an important question of federal law which has not been, but should be, settled by this Court.

Petitioners argue that their maximum deductions for different categories of work-related expenses are permissible under 42 U.S.C. §602(a)(7). This argument ignores the plain language of the federal statute which requires the deduction of *"any* expense reasonably attributable to the earning of . . . income". (Emphasis added.) The commonly accepted meaning of the term "any" leads to the conclusion that §602(a)(7) requires the deduction of *all* actual work-related expenses,[4] subject only to a requirement of reasonableness.

This interpretation of 42 U.S.C. §602(a)(7) is mandated by this Court's decision in *Shea* v. *Vialpando*. There, the Colorado welfare department provided an absolute maximum deduction of only thirty dollars ($30.00) for all work-related expenses of AFDC recipients. In concluding that this policy violated §602(a)(7), this Court made the following comments which are equally applicable to the facts of the present case:

---

[4]This interpretation of the statute is also supported by the implementing regulations which require the deduction of *"all actual* expenses", 45 C.F.R. §233.20(a)(7)(i). (Emphasis added.)

> By its terms [§602(a)(7)] requires the consideration of "any" reasonable work-related expenses in determining eligibility for AFDC assistance. In light of the evolution of the statute and the normal meaning of the term "any" we read this language as a Congressional directive that no limitation apart from that of reasonableness, may be placed upon the recognition of expenses attributable to the earning of income. Accordingly, a fixed work expense allowance which does not permit deduction for expenses in excess of the standard is directly contrary to the language of the statute. *Id.* at 260.
>
> Standardized treatment of employment-related expenses without provision for demonstrating actual and reasonable expenses in excess of that standard amount, such as Colorado has adopted, threatens to defeat the goal Congress sought to achieve in adopting the mandatory work expense recognition provision of [§602(a)(7)].
>
> By limiting employment expenses to $30.00 per month, the Colorado regulation resulted in a disincentive to seek or obtain employment, for all recipients whose reasonable work-related expenses exceed or would exceed that amount. Accordingly, the Colorado regulation conflicts with federal law and is, therefore, invalid.
>
> It is, of course, not the adoption of a standardized work expense allowance per se which we hold to be violative of [§602(a)(7)] of the Act, but the fact that the standard used by Colorado is in effect a maximum or absolute limitation upon the recognition of such expense. *Id.* at 261.

The facts in *Shea* differ from the facts of this case to the extent that the invalid Colorado policy did not allow itemization for categories of work-related expenses. At the time of trial, Missouri allowed a maximum deduction of $0.15 per mile for transportation, $0.60 per meal for lunch, and no deduction for

clothing other than such items as uniforms or special shoes. However, the effect of the maximum deductions allowed for work-related transportation, clothing and lunch expenses in the present case is identical to the effect of the invalid Colorado regulation. In both cases, a maximum standard deduction prevented individual AFDC applicants and recipients from receiving deductions for higher actual expenses. Since the effect is the same in both situations, the holding in *Shea* applies with equal force to the facts of this case,[5] *Perez* v. *Chang*, 438 F. Supp. 238 (D. Haw., 1977); *Fones* v. *Percy*, No. 78-C-191 (W.D. Wisc., December 7, 1978), *aff'd* 601 F2d 600 (7th Cir. 1979). (A copy of the *Fones* decision is included as Appendix 1 to this Brief.)

Accordingly, the Court of Appeals correctly held that the reasoning of *Shea* applies here and prohibits maximum deductions for the work-related transportation, clothing and meal expense of AFDC applicants and recipients.

---

[5]Amici Curae contend that the legislative history of section 602(a)(7) supports petitioners' position that maximum standards may be imposed. However, this Court, in *Shea*, analyzed the legislative history of the section, both before and after its passage, and concluded that maximum standards were clearly impermissible. *Shea*, 416 U.S. at 263-265. This Court also discounted as irrelevant amici curae's claim that an increased administrative burden would be borne by the states. *See, Shea*, n.13. Moreover, other states clearly permit verification of the actual, reasonable work-related expenses in the areas which are involved in this case. *See*, n. 3. If the administrative burden is as great as amici curae seem to indicate, then it is difficult to comprehend why the verification of actual expenses is voluntarily permitted in these states.

II

The Court Of Appeals' Decision Refusing To Defer To HEW's Interpretation Of 42 U.S.C. §602(a)(7) Is Not In Conflict With Prior Decisions Of This Court.

The Department of Health, Education and Welfare approved Missouri's policy of establishing maximum deductions for the work-related transportation, meal and clothing expense of AFDC applicants and recipients. Petitioners contend that the Court of Appeals failure to give deference to HEW's position is in conflict with applicable decisions of this court, *Southwestern Sugar and Molasses Co.* v. *River Terminals Corporation,* 360 U.S. 411 (1959); *Far East Conference* v. *United States of America,* 342 U.S. 570 (1952); *Rosado* v. *Wyman,* 397 U.S. 397 (1970); *Mathews* v. *Eldridge,* 424 U.S. 319 (1976); and *Volkswagenwerk Aktiengesellschaft* v. *Federal Maritime Commission,* 390 U.S. 261 (1968). A fair reading of these cases shows no conflict between these decisions and the decision by the Court of Appeals. They merely require that consideration be given to the statutory interpretation of the relevant administrative agency.

In *Shea,* the state welfare officials made the same claim regarding HEW sanctioning their practice of adopting maximum work-expense deductions as petitioners make in this case. This Court, in determining that it was not bound by HEW's position, stated:

> But the sound principle of according deference to administrative practice normally applies only where the relevant statutory language is unclear or susceptible of differing interpretations . . . In view of the literal requirements of [§602(a)(7)], which accord with the federal policy underlying its enactment, we need not look to agency practice in this case. Moreover, HEW itself has not adhered to a uniform practice. Although in recent years, HEW has construed [§602(a)(7)] to permit standardiza-

> tion of some items, in 1964 it required that "items of work expenses must be allowed when there is a determination that such expenses do, in fact, exist in the individual case". HEW Handbook of Public Assistance Administration, Part IV, #1340 (1967).
>
> *Shea,* 416 U.S. at 262-263, n. 11.

The instant case presents a situation identical to that in *Shea.* The applicable statute, 42 U.S.C. §602(a)(7), requires the deduction of *"any* expenses reasonably attributable to the earning of . . . income". (Emphasis added.) This language is clear and susceptible of only one interpretation. In addition, some states such as Minnesota and Indiana have been permitted to treat work-related transportation and meal expense in a manner inconsistent with HEW's alleged policy. Since these states' AFDC plans were also approved by HEW, it is clear that HEW has not followed a uniform practice with respect to the situation presented here. Under these circumstances, the Court of Appeals' decision not to defer to HEW's statutory interpretation was proper and is not in conflict with prior decisions of this Court.

III

The Award of Attorney's Fees By The Eighth Circuit Court of Appeals Is Not Erroneous And Neither Conflicts With Prior Decisions Of This Court Nor With Prior Decisions Of Other Circuit Courts Of Appeals.

Petitioners argue that the Attorney's Fees Awards Act of 1976 (Act), 42 U.S.C. §1988, confers authority only upon district courts to award attorney's fees. However, this Court has previously found that federal courts of appeals do have authority under the Act to award attorney's fees for services performed in the appellate courts. *Hutto* v. *Finney,* 437 U.S. 678 (1980). Those Courts of Appeals which have addressed this issue have also determined that they had authority to award attorney's fees under the Act. *Vasquez* v. *Fleming,* 617 F2d 334 (3rd Cir. 1980);

Green v. *Ten Eyck*, 572 F2d 1233 (8th Cir. 1978); *Davis* v. *Murphy*, 587 F2d 362 (7th Cir. 1978).

IV.

The Award Of Attorney's Fees To Legal Services Attorneys By The Eighth Circuit Court Of Appeals Is Not Erroneous And Does Not Conflict With Prior Decisions Of Other Circuit Courts Of Appeals.

Petitioners contend that the purpose of the Act is not satisfied by an award of attorneys' fees to legal services lawyers. The Court in *Rodriquez* v. *Taylor*, 569 F2d 1231 (3rd Cir. 1977), *cert. den.* 436 U.S. 913 (1978) (attorney's fees issue raised in Petition for Writ of Certiorari, 46 U.S.L.W. 3706) found that legal services attorneys were entitled to receive a fee for their services under the Act and noted:

> The award of fees to legal aid offices and other groups furnishing *pro bono publico* representation promotes the enforcement of the underlying statutes as much as an award to privately retained counsel. Legal services organizations often must ration their limited financial and manpower resources. Allowing them to recover fees enforces their capability to assist in the enforcement of congressionally favored individual rights.
>
> 569 F2d at 1245.

Accord, *Oldham* v. *Ehrlich*, 617 F2d 163 (8th Cir. 1980). *See Brown* v. *Stanton*, 617 F2d 1224 (7th Cir. 1980); *Dennis* v. *Chang*, 611 F2d 1302 (9th Cir. 1980); *Bonnes* v. *Long*, 599 F2d 1316 (4th Cir. 1979); *Lund* v. *Affleck*, 587 F2d 75 (1st Cir. 1978); *Holly* v. *Levine*, 605 F2d 638 (2d Cir. 1979); *Mid Hudson Legal Services, Inc.* v. *G + U, Inc.*, 578 F2d 34 (2d Cir. 1978); *Gore* v. *Turner*, 563 F2d 159 (5th Cir. 1977); *See also*, *Hairston* v. *R & R Apartments*, 510 F2d 1090 (7th Cir. 1975); *Incarcerated Men of Allen County Jail* v. *Fair*, 507 F2d 281 (6th Cir. 1974); *Brandenberger* v. *Thompson*, 494 F2d 885 (9th Cir. 1974).

The cases cited by petitioners are inapposite.[6] In *Hoitt* the court noted that legal services corporations could be awarded attorney's fees, 495 F2d at 221, but because of the particular circumstances of that case upheld the denial of fees as within the ambit of the district court's discretion. *Gaddis* and *Woolfolk* antedated the Act and both the Second Circuit Court of Appeals and the Fourth Circuit Court of Appeals now allow attorney's fees to be awarded legal services organizations under the Act.[7]

V

The Award Of Attorney's Fees Pursuant To The Attorney's Fees Awards Act Of 1976, 42 U.S.C. §1988, In A Case Where A State Regulation Is Found To Be Inconsistent With The Social Security Act And A Substantial Constitutional Question Is Alleged Is Not Erroneous And Is Not In Conflict With Decisions Of This Court Or Other Courts Of Appeals.

The Attorney's Fees Awards Act of 1976, 42 U.S.C. §1988, authorizes an award of fees to the prevailing party in actions brought pursuant to 42 U.S.C. §1983. Petitioners contend that Respondents are not entitled to an award under the Act because this case was decided on the pendent statutory claim and respondents' constitutional claim under §1983 was frivolous.

This Court recently held that civil rights litigants who have alleged a substantial constitutional claim under section 1983 are entitled to an award of attorney's fees under the Act, even

---

[6] *Hoitt* v. *Vitek*, 495 F2d 219 (1st Cir. 1974); *Gaddis* v. *Wyman*, 336 F. Supp. 1225 (S.D. N.Y. 1972); *Woolfolk* v. *Brown*, 358 F. Supp. 524 (E.D. Va. 1973).

[7] *See, Mid Hudson Legal Services, Inc.* v. *G + U., Inc.*, 578 F2d 34 (2d Cir. 1978) and *Bonnes* v. *Long*, 599 F2d 1316 (4th Cir. 1979), respectively.

though relief is granted solely upon a pendent statutory claim, *Maher* v. *Gagne,* No. 78-1888 (U.S. Supreme Court, decided June 25, 1980); *See, Kimbrough* v. *Arkansas Activities Association,* 574 F2d 423 (8th Cir. 1978); *Lund* v. *Affleck,* 587 F2d 75 (1st Cir. 1975); *Bonds* v. *Stanton,* 555 F2d 172 (7th Cir. 1977), *cert. den.* 438 U.S. 916 (1978); *Seals* v. *Quarterly Country Club,* 562 F2d 390 (6th Cir. 1977). The issue presented is, therefore, whether respondents have alleged a substantial constitutional claim under §1983. If they have alleged a substantial constitutional claim, then they are entitled to an award of attorney's fees under the Act.

Respondents' civil rights action under §1983 alleged[4] that petitioners' policy violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment. The test for determining whether respondents have stated a substantial constitutional question is set forth in *Hagans* v. *Lavine,* 415 U.S. 528 (1974). In *Hagans,* this Court held that a constitutional claim is substantial unless it is obviously frivolous or inescapably foreclosed by prior decisions.

---

[4] Respondents Complaint alleges the following Constitutional claims:

First Claim For Relief

> By illegally failing to deduct from plaintiffs' gross income any and all actual work-related expenses prior to determining need and the amount of the AFDC assistance grant, defendants have created two classes of AFDC applicants and recipients in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. One class, which consists of those AFDC applicants and recipients who are employed, but whose work-related expenses do not exceed the maximum deductions permitted by defendants, have their need and the amount of the assistance grants determined on the basis of their available resources. The second class, composed of AFDC applicants and recipients who are employed and whose work-related expenses exceed the maximum deductions permitted by defendants, do not have their need and the amount of their assistance grants determined on the basis of their available

In *Gagne* v. *Maher,* 594 F2d 336, 341 (2d Cir. 1979), the Court of Appeals for the Second Circuit was asked to decide whether the following claim stated a substantial constitutional question:

> Whether an impermissible distinction had been created between those working welfare recipients whose work-related expenses were fully considered in the computation of AFDC awards and those whose work-related expenses were not fully considered in violation of the equal protection clause.

The Second Circuit held that this claim stated a substantial constitutional question under the *Hagans* v. *Lavin* test. This is precisely the same equal protection claim which is raised by respondents, *See* n. 8.

---

resources because all work-related expenses are not deducted from their gross income prior to determining need and the amount of their assistance grants.

This classification is arbitrary and irrational and contrary to the purposes of the AFDC program, one of which is to provide a work incentive for applicants and recipients by deducting work-related expenses prior to determining need and the amount of their assistance grants and thus is invalid under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Second Claim For Relief

The Social Security Act, 42 U.S.C. §602(a)(7) and implementing regulation, 45 C.F.R. §233.20, establish plaintiffs' property rights to assistance grants which are determined by deducting from plaintiffs' gross income any and all actual work-related expenses prior to determining need and the amount of their assistance grants. By illegally failing to deduct from plaintiffs' gross income any and all actual work-related expenses, defendants have violated and are violating substantive due process rights secured by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

Since their constitutional claims are neither frivolous nor inescapably foreclosed by prior decisions, respondents have stated a substantial constitutional claim, *Hagans, supra.* They are accordingly entitled to an award of attorney's fees based upon their pendent statutory claim.[9]

CONCLUSION

For the reasons set forth above, the petition for certiorari should be denied.

Respectfully submitted,

MICHAEL L. LYONS
Legal Services of Eastern Missouri, Inc.
216 North Third Street
St. Charles, Missouri 63301
(314) 946-2221

RICHARD CHASE
Legal Services of Eastern Missouri, Inc.
3684 Lindell Boulevard
St. Louis, Missouri 63108
(314) 534-8810
Attorneys for Respondents

July, 1980

---

[9] In addition, this Court has recently held that violations of the Social Security Act may be remedial under the "and laws" language of section 1983, and therefore respondents' action is expressly covered by section 1988. *Maine* v. *Thiboutot,* No. 79-838 (U.S. Supreme Court, decided June 25, 1980).

APPENDIX

APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

THELMA FONES, on behalf of herself and all other persons similarly situated,

Plaintiffs,

vs.

DONALD E. PERCY, individually and in his capacity as Secretary of the Wisconsin Department of Health and Social Services; BERNARD STUMBRAS, individually and in his capacity as Administrator of the Division of Economic Assistance of the Wisconsin Department of Health and Social Services; and THEIR AGENTS, EMPLOYEES, SUCCESSORS IN OFFICE, ASSISTENTS AND ALL OTHERS ACTING IN CONCERT OR COOPERATION WITH THEM OR AT THEIR DIRECTION OR UNDER THEIR CONTROL,

Defendants.

OPINION AND ORDER
78-C-191

Plaintiffs have moved for summary judgment. Jurisdiction is present as to the subject matter and the parties.

I find that there is no genuine issue as to any of the material facts set forth in the stipulation filed September 15, 1978, and the addendum thereto filed October 13, 1978.

The motion turns on the proper reading of *Shea* v. *Vialpando,* 416 U.S. 251 (1974).

Defendants' contention is that a standard allowance of 17 cents per mile is reasonable, that is, reasonably high. More particularly, counsel assert that 17 cents per mile is the same allowance that the state uses in reimbursing its employees for the use of their personal automobiles for purposes of state business. I do not find this proposition among the stipulated facts, but I will assume its truth. The argument seems to be that if this is a permissible generalized practice for one purpose, it is also lawful for the purpose at issue in the present case.

I have no basis for deciding whether the 17 cents per mile allowance is lawful for the use of the automobiles of state employees for public business. Conceivably, it is unlawful. But that matter is not governed by Section 402(a)(7) of the Social Security Act, as construed in *Shea,* as is the issue in this case.

It is true that the manner in which Colorado had limited employment expenses in *Shea* differed from the manner in which Wisconsin proposes to act, and it may well be that at the time the Colorado method had more severe consequences for more recipients than would the proposed Wisconsin method presently. But, as defendants' counsel appears to concede, in *Shea* the Court was explicit that recipients must be given the opportunity to show that their actual expenses exceed the standard amount. Defendants' counsel considers it critical that in *Shea* the court applied the adjective "reasonable" to the words "actual expenses" in this context. I appreciate that when a recipient is given the opportunity to show that the recipient's actual expenses exceed the standard allowance and does make such a showing, there remains to be determined whether the excess of actual expenditure is "reasonably attributable to the earning of" income. However, I do not understand why the recipient may be deprived of the opportunity to take step one (the showing that actual expenses exceed the standard allowance) simply because in a given case the recipient may or may not succeed in taking step two (the showing that the excess of actual expenditure is reasonably attributable to the earning of income).

I realize that if in 1978, a state imposed a flat limit of a dollar per mile, for example, it might well become academic whether one is afforded the opportunity to show that the limit has been exceeded by one's actual expenses reasonably attributable to the earning of income. Even in such circumstances, the opportunity probably could not simply be denied, under *Shea*. But defendants do not contend, nor on the record made in this case could they successfully contend, that the 17 cents per mile limit renders the opportunity academic.

In their brief in support of their motion for summary judgment, plaintiffs have offered some observations about difficulties inhering in some of the precise terms of the preliminary injunction, and plaintiffs have submitted a proposed permanent injunction in a form intended to eliminate those difficulties. From the silence of defendants' counsel on these points, I infer that assuming an injunction is to be granted over their opposition, defendants have no objection to the form proposed by plaintiffs. However, I have made certain minor modifications in the proposed order.

Order

1. It is hereby ordered that plaintiffs' motion for summary judgment is granted.

2. It is ordered that judgment be entered declaring that the Social Security Act, 42 U.S.C. §602(a)(7), is violated by defendants' policy of failing to deduct from the earned income of AFDC recipients whose cars are necessary for employment actual transportation costs reasonably attributable to the earning of income which are in excess of either (a) 17 cents per mile or (b) the allowance computed according to the May, 1978 policy.

3. It is further ordered that defendants Donald E. Percy and Bernard Stumbras and their agents, employees, successors in office, assistants and all others acting in concert or cooperation with them or at their discretion or under their control shall be

permanently enjoined from failing to deduct from the earned income of AFDC recipients whose cars are essential for employment the following costs: the purchase price of a car or the monthly payments for a loan for the purchase of a car, subject to a reasonable limitation on the purchase price which is no less than Fifteen Hundred Dollars ($1,500.00); collision and liability insurance in reasonable amounts; total car registration fees; total parking fees and tolls required for employment; gas and oil used for driving necessary for employment; and the cost of repairs and maintenance reasonably attributable to the earning of income.

4. It is further ordered that within thirty (30) days of the entry of this order, defendant Donald E. Percy or his successor in office shall send a notice to the director of each county welfare agency in the State of Wisconsin containing the following information (a copy of this notice shall be provided to counsel for the plaintiffs at the same time):

(a) the requirements contained in paragraph 2 and 3 of this order and a statement that it is binding upon the directors and upon all employees of their respective agencies;

(b) the prospective relief available to recipients as a result of this order and the documentation recipients must present to the county agency to obtain prospective benefits;

(c) a statement whether retroactive benefits shall be available to members of the class and, if retroactive benefits are available, the administrative mechanism and time limitations which shall govern the recovery of those benefits;

(d) a statement that within sixty (60) days of the entry of this order a written notice containing the information in

(b) and (c) shall be sent by the director of each county welfare agency to all AFDC recipients in that county who are working or have worked since July 1, 1977.

5. It is further ordered that within one hundred twenty (120) days from the entry of this order, defendant Donald E. Percy or his successor in office shall file an affidavit with the court, with a copy to counsel for plaintiffs, containing a detailed statement of the steps taken to implement and assure the compliance of county agencies with this order.

Entered this 7th day of December, 1978.

BY THE COURT:

(James E. Doyle)
District Judge

No. _____

In the Supreme Court of the United States

October Term, 1979

DAVID R. FREEMAN, Director, State of Missouri, Department of Social Services,

and

JOHN ZUMWALT, Director, State of Missouri, Department of Social Services, Division of Family Services,

Petitioners,

vs.

LOU EMMA CHAMBLY, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF OF THE STATES OF MISSISSIPPI, RHODE ISLAND, ARKANSAS, AND NEW HAMPSHIRE AMICI CURIAE IN SUPPORT OF PETITIONER

BILL ALLAIN, Attorney General
State of Mississippi

JIM R. BRUCE, II
Special Assistant Attorney General
Post Office Box 220
Jackson, Mississippi 39205

DENNIS J. ROBERTS, II, Attorney General
State of Rhode Island
56 Pine Street
Providence, Rhode Island 02903

JOHN STEVEN CLARK, Attorney General
State of Arkansas
Justice Building
Little Rock, Arkansas 72201

GREGORY H. SMITH, Attorney General
State of New Hampshire
State House Annex
Concord, New Hampshire 03301

Attorneys for Petitioners

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

TABLE OF CONTENTS

Interest of the Amici 1

Argument—

States may establish reasonable maximum allowances for individual items of expense incurred as employment expenses for food, clothing, and transportation 4

Conclusion 10

Certificate of Service 11

Appendix 13

Cases Cited

Shea v. Vialpando, 416 U.S. 251 ..... 3, 4, 9, 10

Weaver v. Page, unpublished opinion, No. 78-458-Orl-Civ-R (M.D. Fla., April 9, 1979) 2

Statutes Cited

42 U.S.C. § 602(a)(7), § 402(a)(7) of the Social Security Act 2, 4, 5, 6, 10

42 U.S.C. § 1396a(f) 3, 4

No. .....

In the Supreme Court of the United States

October Term, 1979

DAVID R. FREEMAN, Director, State of Missouri, Department of Social Services,

and

JOHN ZUMWALT, Director, State of Missouri, Department of Social Services, Division of Family Services,

Petitioners,

vs.

LOU EMMA CHAMBLY, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF OF THE STATES OF MISSISSIPPI, RHODE ISLAND, ARKANSAS, AND NEW HAMPSHIRE AMICI CURIAE IN SUPPORT OF PETITIONER

INTEREST OF THE STATES OF MISSISSIPPI, RHODE ISLAND, ARKANSAS AND NEW HAMPSHIRE

The States of Mississippi, Rhode Island, Arkansas, and New Hampshire are submitting this separate amici brief in this matter because of their belief that it is of extreme importance for them to provide, within reasonable fiscal limits, for effective and equitable assistance to needy families with dependent children.

The U. S. Court of Appeals for the Eighth Circuit in *Freeman v. Zumwalt,* Appeal No. 79-2006, prohibited the State of Missouri from setting any maximum amounts for individual work-related expenses in determining eligibility and the amount of assistance to families under the Aid to Families with Dependent Children (AFDC) program, 42 U.S.C. § 602(a)(7). The Court reached its decision despite evidence that Missouri provided individual consideration of each work-related expense and that the maximum amounts on each expense were reasonable amounts. Moreover, there is a conflict between federal courts on the issues here presented. In *Weaver v. Page,* Civil Action No. 78-458-Orl-Civ-R (M.D. Fla., April 9, 1979), unpublished opinion,[1] the court upheld Florida's maximum allowance of $.14 per mile for actual work-related transportation expenses.

Although the statutes and regulations in Mississippi, Rhode Island, Arkansas, and New Hampshire and several other states[2] are not identical to Missouri's, they all contain a maximum limitation on the amounts or coverage of various individual items of expenses incurred by AFDC recipients in connection with the earning of income.[3] These restrictions are generally based upon the "reasonableness" of each individual expenditure. With few exceptions, the maximums were set subsequent to and in

---

1. See Appendix A.

2. Evidence presented at the trial of this action indicates that of thirty-one states responding to the survey conducted by the Missouri Division of Family Services, at least twenty-four states place some type of maximum amount of items of work expenses. Those states are Alabama, Arkansas, Delaware, Florida, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Montana, New Hampshire, New Jersey, Ohio, Oklahoma, Oregon, Rhode Island, Texas, Utah, West Virginia, and Wisconsin.

3. Mississippi's maximums for work-related expense items are currently being challenged in *Wilson, et al. v. Byars, et al.,* Civil Action No. J80-0099(N) (S.D. Miss.).

accordance with what the states believed was the holding by this Court in *Shea v. Vialpando,* 416 U.S. 251, 40 L.Ed.2d 120, 94 S.Ct. 1746.

The issue before this Court in the matter *sub judice* has significant fiscal implications on the number of eligible families, the increased costs to the programs, and the level of benefits to the needy poor.[4] Moreover, the impact of the Eighth Circuit's ruling is not limited to the AFDC program, but also affects the state-operated medicaid programs in fifteen states which condition eligibility for medicaid benefits to receipt of AFDC cash payments. 42 U.S.C. § 1396a(f).[5]

Increases in program costs as a result of inflation, increased eligibility and benefit costs, and added administrative costs are certain to result in a further reduction in the rate of assistance payments based on a family's standard of need. In order to maintain the level of assistance to those most in need of it and to deliver services at the least expense, the States of Mississippi, Rhode Island, Arkansas, and New Hampshire join this case as amici curiae in support of the argument and position of the State of Missouri.

---

4. The Mississippi Department of Public Welfare has recently estimated that it has a caseload of 58,326 cases (families) per month. The number of persons currently receiving AFDC benefits in Mississippi is 177,894. Approximately 33.79% of the AFDC clients had earned income during any month. The cost of increasing only the travel allowance from $.12 to $.20 per mile is $912,324 for Fiscal Year 1981. This does not include additional administrative costs or increased eligibility which would result were Mississippi prohibited from using reasonable maximums for items of work expense. Nor does it include the added costs of extending mandatory medicaid coverage to newly eligible families.

5. The following states provide medicaid coverage to families which qualify for AFDC cash payments: Colorado, Connecticut, Hawaii, Illinois, Indiana, Mississippi, Minnesota, Missouri, Nebraska, New Hampshire, North Carolina, Ohio, Oklahoma, Utah, and Virginia.

ARGUMENT

States May Establish Reasonable Maximum Allowances for Individual Items of Expense Incurred As Employment Expenses for Food, Clothing, and Transportation.

Prior to the passage of the 1962 amendment to 42 U.S.C. § 602(a)(7) and § 402(a)(7) of the Social Security Act, states were permitted but not required to allow credit for work-related expenses in determining eligibility for AFDC payments.

This Court in *Shea v. Vialpando,* 416 U.S. 251, 40 L.Ed.2d 120, 94 S. Ct. 1746 (1974), noted:

> Section 3140 of the HEW Handbook of Public Assistance Administration, Part IV (1957), thus provided in part:
>
> > A State public assistance agency may establish a *reasonable minimum money amount to represent the combined additional cost of three items*—food, clothing, and personal incidentals—for all employed persons. The state may provide that *other items of work expense will be allowed* when there is a determination that such expenses do, in fact, exist in the individual case. (N.8, p. 260). (Emphasis supplied).

The option suggested by HEW of deducting employment expenses from total income in determining eligibility for assistance permitted states to combine the items of work expense. The option also provided that "other items of work expense (other than food, clothing, and incidentals) could be allowed where the expenses actually exist." The term "item of work expense" was a general description of

the different types of expenses which the states might consider in setting "reasonable minimum money payments."

This Court also quoted then Secretary of HEW Ribicoff's testimony explaining the proposed amendment to Section 402(a)(7) before the Senate Committee on Finance. The Secretary stated, *inter alia*:

> By having this provision, the State will take into account *these expenses* so people will get jobs. I believe that the State should give them an *allowance for those items* that are *necessary* for them to get the job. (Emphasis supplied).

The obvious conclusion is that in explaining and recommending the amendment, the Secretary limited the terms "expenses" and "items of expenses" to general categories of work expenses. Moreover, as he explained, the bill would require states to provide *"an allowance"* for those items of work expenses necessary to get a job. It is clear that the Secretary contemplated some type of standardized deduction which would take into consideration all "items" of employment expense "necessary" or reasonably attributable to the earning of income.

The Senate Committee on Finance in its report on the bill stated:

> Under present law . . . states are permitted, but not required, to take into consideration the expenses an individual has in earning any income. . . . The committee believes that it is only reasonable for states to take *these expenses* fully into account. . . . the bill has, therefore, added a provision in all assistance titles requiring the states to give consideration to any expenses reasonably attributable to the earning of income.

The Committee was keenly aware of previous practices on the part of several states of not permitting any allowance or consideration of work related expense items such as food, clothing, and transportation. The intent of Congress as reflected in the Committee report was to make the previous option recognized by HEW mandatory for the states. Whereas the states previously had an option to pick and choose those work-related expense items they would recognize or to refuse to recognize any expenses whatsoever, the Amendment requires states to take all items or categories of expense into consideration. The only limitation on the types of work expense is whether a particular type of expense is "reasonably attributable" to employment. It also would appear that the phrase "reasonably attributable" in the Amendment is synonymous with the phrase "reasonably necessary." (See testimony of Secretary Ribicoff above).

In its amended form, Section 402(a)(7) provides in part:

> . . . the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children . . . as well as any expenses reasonably attributable to the earning of such income.

In this context, the Court in *Shea v. Vialpando, supra,* addressed the use of "a fixed work-expense allowance in Colorado's AFDC program. With the exception of mandatory payroll deductions and child care costs, Colorado used a single standardized deduction of $30.00 for all other employment expenses, including transportation, special clothing, union dues, additional food, and all other items of cost. Significantly, the fixed allowance did not provide individualized treatment for each item of expense, nor did it allow for consideration of reasonable amounts in excess of

the standardized.[6] It was further noted that the $30.00 allowance was the result of "a satistical average of the actual expenses of all AFDC participants in the State." Whether the amount was reasonable was not at issue.

The unanimous decision of this Court held that Colorado had improperly limited the recognition of work expenses. The Court stated:

> By its terms, § 402(a)(7) requires the consideration of "any" reasonable work expenses in determining eligibility for AFDC assistance. In light of the evolution of the statute and the normal meaning of the term "any," we read this language as a congressional directive that no limitation, apart from that of reasonableness, may be placed upon the recognition of expenses attributable to the earning of income. (p. 260).

Accepting the reasoning of the United States Court of Appeals for the Tenth Circuit, the Court agreed that the phrase in the amendment to the Act "take into consideration" modifies "income and resources . . . *as well* as any expenses reasonably attributable to the earning of any such income." The Court cautiously observed:

> Thus, it *seems* inescapable that whatever treatment is accorded income must be extended to expenses attributable to the earning of income. (p. 260). (Emphasis supplied).

---

6. Colorado's work-expense regulation provided: "For employment expenses such as transportation, special clothing, union dues, special education or training costs, telephone, additional food or personal needs, *etc.*, which are an obligation due to the employment, an allowance of $30.00 per month is made for such costs." [Emphasis suplied]. Thus, the single allowance did not consider all items of expense in determining the amount of the allowance, but used "etc." to cover any other expenses which were not taken into consideration. In doing so, Colorado foreclosed any meaningful consideration of other expenses.

And,

> Thus, *if* income and expenses related to the production of income are to be treated alike, as the terms of § 402 (a) (7) *appear* to require, both must be considered on an individualized basis. (p. 262). (Emphasis supplied).

It is true that the phrases "income and resources" and "any expense reasonably attributable to the earning of income" are grammatically equivalent. However, the grammatical structure should not be allowed to obscure the separate legislative origins for each phrase.

As this Court has noted, Secretary of HEW Ribicoff in his explanation of the proposed amendment to the Senate stated that provision regarding work-related expenses would require states to give "an allowance for those items that are necessary" for employment.

In addition, the report of the Senate Committee on Finance indicated that the amendment would require states to fully take into account expense "items" reasonably attributable to employment. Grammatical structure alone does not dictate the manner by which different matters may be taken into account. A matter may be "taken into account" or "considered" in a number of ways. Such considerations are especially suited for implementation by HEW.

> In *Shea v. Vialpando, supra,* the Court further noted: Recognizing that states in administering AFDC programs must determine the reasonableness of work-related expense does not, however, resolve the issue before us—*whether states may bar all such expenses, no matter how reasonable or necessary, above a fixed cutoff figure.* (N. 4, p. 256). (Emphasis supplied).

The Court further held:

> *It is, of course, not the adoption of a standardized work-expense allowance per se* which we hold to be violative of § 402(a)(7) of the Act, *but the fact that the standard use by Colorado is in effect a maximum or absolute limitation upon the recognition of such expenses.* As the Court of Appeals correctly observed, a standard allowance would be permissible and would substantially serve petitioners' interests in administrative efficiency, if it provided for individualized consideration of expenses in of the standard amount [citations omitted]. *Such a standard allowance would comport fully with the statutory requirement that any reasonable work expense be considered, and would allow individualized treatment where necessary.*[13] (p. 265). (Emphasis supplied).

The "individualized treatment" referred to was fully explained in the accompanying footnote. There it was noted:

> The Court's observation in *Rosado v. Wyman,* 397 U.S. 397, 419, 25 L.Ed.2d 442, 90 S. Ct. 1207 (1970), that "[w]e do not, of course, hold that New York may not, consistently with the federal statutes, consolidate items on the basis of statistical averages . . .," was in no sense intended as a blanket approval of the principal of averaging under AFDC programs *without regard to what is being averaged.* (N.13, p. 265). (Emphasis supplied).

The Court in *Shea v. Vialpando, supra,* concluded that Colorado's single maximum allowance for *all* work expenses was contrary to the statute. It noted that its interpretation was "supported" by the disinclination of Congress to amend the section to permit the use of various standardized al-

lowances. Significantly, both HR 16311 and HR 1 provided for an earned income deduction of $720 per year. The latter bill would have replaced the present work expense provision with a single fixed allowance of $720.[7]

In the case *sub judice*, it is not questioned that Missouri has accorded each item of expense challenged an individualized treatment with due regard to the different items of expense, i.e., transportation, clothing, and meals. The only issue for Missouri and all other state AFDC programs is the reasonableness of the amounts allowed for each item. These limitations relate only to the reasonableness of the particular amounts claimed for each item and are consistent with requirements of 42 U.S.C. § 602(a)(7).

CONCLUSION

Amici Curiae contend that the "basic thrust" of *Shea v. Vialpando, supra,* is that Congress intended that "work-related expenses" should be fully taken into account and that it is impossible to determine whether an "item" of expenses is reasonably attributable to employment and accordingly properly considered by the state without identifying each expense item allowed. Once such items are separated into their components, the state may limit allowance of amount expended for each item based on the reasonableness of the amount in question. To hold otherwise would permit an individual to make unnecessary and unreasonable expenditures in connection with employment and continue to receive full public assistance.

---

7. See *Shea v. Vialpando, supra,* n.12, p. 264.

Accordingly, Amici Curiae respectfully suggest that State of Missouri's petition for certiorari should be granted.

Respectfully submitted,

BILL ALLAIN, Attorney General
State of Mississippi

JIM R. BRUCE, II
Special Assistant Attorney General
State of Mississippi

DENNIS J. ROBERTS, II, Attorney General
State of Rhode Island

JOHN STEVEN CLARK, Attorney General
State of Arkansas

GREGORY H. SMITH, Attorney General
State of New Hampshire

By: JIM R. BRUCE, II
Special Assistant Attorney General
Post Office Box 220
Jackson, Mississippi 39205
Telephone: (601) 354-7130
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I, Jim R. Bruce, II, a Special Assistant Attorney General for the State of Mississippi, on behalf of the amici curiae in the above and foregoing Brief of the States of Mississippi, Rhode Island, Arkansas, and New Hampshire, Amici Curiae in Support of Petitioner, do hereby certify that I have this day mailed via United States Postal Service, first-class postage prepaid, a true and correct copy of the aforementioned Brief of the States of Mississippi, Rhode Island, Arkansas, and New Hampshire Amici Curiae

in Support of Petitioner to the following attorneys for petitioners and respondents:

Honorable John Ashcroft, Attorney General
State of Missouri
Supreme Court Building
Post Office Box 899
Jefferson City, Missouri 65102

Honorable Michael L. Lyons
Legal Services of Eastern Missouri, Inc.
216 North Third Street
St. Charles, Missouri 63301

Honorable Richard Chose
Legal Services of Eastern Missouri, Inc.
3684 Lindell Boulevard
St. Louis, Missouri 63108

This, the 20th day of June, 1980.

JIM R. BRUCE, II

APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

No. 78-458-Orl-Civ-R

HARRIET WEAVER, etc.,
Plaintiff,

vs.

WILLIAM J. PAGE, JR., etc.,
et al.,
Defendants.

MEMORANDUM OF DECISION

(Filed April 9, 1979)

On 31 August 1978 suit seeking injunctive and declaratory relief was instituted by the plaintiff Harriet Weaver on behalf of herself and all other persons similarly situated against William J. Page, Jr., Secretary, Florida Department of Health and Rehabilitative Services (HRS), individually and in his official capacity, Lucie Hadie, District Director of District VII of HRS, individually and in her official capacity, and their agents, employees, successors in office, assistants and all others acting in concert or cooperation with them or at their direction or under their control.

The complaint alleges that the action is brought on behalf of a class of employed recipients of AFDC* grants

*Aid To Families With Dependent Children.

funded under 42 U.S.C. § 601 et sequi whose automobiles are essential for employment and who claim that their actual automobile expenses attributable to the earning of income are not taken into account as required by federal and state law in computing their AFDC grants.

The complaint further alleges that prior to 27 February 1978 a determination was routinely made by HRS as to whether or not a privately owned automobile was essential to the employment of an AFDC recipient. If the automobile's use was found essential, then a reasonable amount of the monthly automobile payment and 14 cents per mile actually traveled was recognized as a work-related expense deduction. No deduction was allowed for other work related transportation expenses such as insurance, repairs, title and tags, inspection, parking, tolls or oil. Effective 27 February 1978, HRS determined that only mileage at 14 cents a mile would be recognized as a reasonable work-related automobile transportation expense.

Plaintiff claims that this policy is invalid under federal and state law in that it does not allow an AFDC recipient to show that actual work-related automobile expenses exceed the allowance of 14 cents per mile.

In their answer filed on 20 February 1979 (with an amendment thereto filed on 22 February 1979), the defendants assert a general denial of the allegations in the complaint and raise several issues by way of affirmative defenses. The defendants also assert that the plaintiff is not competent to represent the class in that she is able to use public transportation in going to and from work and therefore, an automobile is not deemed essential to her employment.

On 23 February 1979, after a hearing on 30 January 1979 on the plaintiff's motion for certification of a class, the

court ordered this cause certified as a class action, the class consisting of "All A.F.D.C. recipients in the State of Florida, who have earned income, whose vehicle has been determined essential for employment by the Florida Department of Health and Rehabilitative Services, and whose actual work-related transportation expenses exceed 14 cents per mile."

The court concludes that the named plaintiff, Harriet Weaver, is a proper representative of the class. The plaintiff has never been denied the right to receive the mileage in question, and it was only after certification of the class that a question arose as to her right to receive the mileage allowance. The record also reflects that the named plaintiff was entitled to receive the mileage fee when the suit was filed, as shown by the budgets admitted into evidence at trial. At some future time mileage may be denied to Mrs. Weaver, but this would not render her inadequate or lacking in standing at the time suit was filed or the class was certified. See *Sosna v. Iowa,* 419 U.S. 393 (1975), and *Senter v. General Motors Corp.,* 532 F.2d 511 (6th Cir. 1976).

The court also concludes on the authority of *Shea v. Vialpando,* 416 U.S. 251, 257 (1974), that it has subject matter jurisdiction by reason of 28 U.S.C. § 1343(3).

The HRS is the agency of the State of Florida which administers federal funds made available by United States taxpayers for the use of the state under the provisions of 42 U.S.C. § 601 et sequi. See Section 409.026, F.S. 1978. In connection with its administration of these funds in its program for aid to families with dependent children, HRS adopted a written policy which provides a 14 cent-per-mile limit on the expense which may be claimed by a beneficiary of the program as a work-related expense for the operation of a privately owned motor vehicle. The

policy precludes any deduction for the cost of automobile payments or any other expense with respect to the operation of an automobile.

The substantive issue presented by this litigation is whether or not this policy is in conflict with the provisions in 42 U.S.C. § 602(a)(7) which provide in pertinent part as follows:

> "(a) A state plan for aid and services to needy families with children must . . . (7) . . . provide that the State agency shall, in determining need, take into consideration . . . any expense reasonably attributable to the earning of any such income . . . ."

The plaintiff takes the position that the Supreme Court decision in *Shea v. Vialpando,* supra, precludes the use of a standardized expense allowance for the operation of a motor vehicle in connection with the earning of income.

In *Shea v. Vialpando,* the Court considered the legality of a Colorado regulation adopted in the administration of its plan for aid to families with dependent children which allowed a $30.00 deduction for all work-related expenses, except mandatory payroll deductions and child care expenses. The issue before the Supreme Court in that case was, therefore, dissimilar to that considered in the present case. As stated by the Court, in footnote 4 at page 257:

> ". . . Recognizing that States in administering AFDC programs must determine the reasonableness of work-related expenses does not, however, resolve the issue before us - *whether States may ban all such expenses, no matter how reasonable or necessary, above a fixed cutoff*. . ." (Emphasis added)

This court reads *Shea v. Vialpando* as requiring individualized consideration be given all work-related expenses and precluding a maximum limit on all such expenses.

The regulation which is here at issue does not impose a maximum limit on all work-related expenses. It simply imposes a maximum limit on the cost per mile which may be allowed as an expense deduction for use of a privately owned automobile in the production of earned income. No limitation is imposed on the number of miles to which the cost factor may be applied.

The court takes judicial notice of the fact that the cost of operating a motor vehicle is a derivative of the purchase price, cost of fuel, oil, maintenance, insurance, salvage value and miles driven. Thus, the actual cost of operating a motor vehicle cannot be determined accurately until the vehicle has been disposed of. Where the State is faced with the responsibility for allowing a deduction for such an expense, it is free to adopt by regulation a standardized deduction which provides for individualized treatment and reasonableness in amount. The regulation under question meets both criteria. It provides individualized treatment because it permits an expense deduction based on the number of miles actually driven by the beneficiary. With regard to the reasonableness of the rate, there was no evidence presented before the court that 14 cents per mile is not reasonably related to actual cost of operation. There was evidence presented, however, to indicate that the State of Florida pays its employees who drive privately owned vehicles and who are entitled to expense allowance 14 cents a mile. This court, therefore, concludes that 14 cents a mile is reasonable in amount.

For the foregoing reasons, the court concludes that the state regulation under consideration, to the extent that it limits the mileage allowance to 14 cents a mile, is not inconsistent with the congressional mandate requiring state plans to take into account any expenses reasonably attributable to the earning of income. For this court to

deny the State the authority to establish a standard deduction for the use of privately owned automobiles which has some reasonable relationship to actual cost would be tantamount to forcing the State to create a system which of necessity would permit deductions based on personal choices that far exceed the reaches of necessity. The Supreme Court was careful to point out in *Shea v. Vialpando*:

> ". . . No doubt a State should scrutinize with particular care claimed expenses for automobiles or other items that in large measure are capital expenditures which will also be used for personal purposes unrelated to employment . . .". (See note 4 in the opinion of the Court at page 257.)

The court concludes that the plaintiff in her individual capacity and as representative of the class heretofore certified by the court has failed to establish a right to the relief sought. The Clerk will enter judgment for the defendants.

DONE AND ORDERED in Chambers at Orlando, Florida, this 9th day of April, 1979.

/s/ John A. Reed, Jr.
Judge

Supreme Court, U.S.
FILED
JAN 5 1981
MICHAEL RODAK, JR., CLERK

No. 79-1953

In the Supreme Court of the United States

OCTOBER TERM, 1980

DAVID R. FREEMAN, DIRECTOR, MISSOURI DEPARTMENT OF SOCIAL SERVICES, ET AL., PETITIONERS

v.

LOU EMMA CHAMBLY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 79-1953

DAVID R. FREEMAN, DIRECTOR, MISSOURI DEPARTMENT OF SOCIAL SERVICES, ET AL., PETITIONERS

v.

LOU EMMA CHAMBLY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is filed in response to the Court's invitation to the Solicitor General to express the views of the United States.

QUESTION PRESENTED

Whether Missouri's limitation on the type or amount of work-related transportation, clothing, and meal expenses that may be deducted by applicants for and recipients of Aid to Families with Dependent Children (AFDC) violates Section 402(a)(7) of the Social Security Act, 42 U.S.C. 602(a)(7), and an implementing regulation, 45 C.F.R. 233.20(a)(7)(i).

TABLE OF CONTENTS

	Page
Statement	1
Argument	6
Conclusion	14

TABLE OF AUTHORITIES

Cases:

Fones v. *Percy*, No. 78-C-191 (W.D. Wis. Dec. 7, 1978), aff'd, 601 F.2d 600	13
Hutto v. *Finney*, 437 U.S. 678	6
King v. *Smith*, 392 U.S. 309	1
Maher v. *Gagne*, No. 78-1888 (June 25, 1980)	6
Maine v. *Thiboutot*, No. 79-838 (June 25, 1980)	6
Perez v. *Chang*, 438 F. Supp. 238	13
Shea v. *Vialpando*, 416 U.S. 251	2, 5, 6, 7, 8, 9, 10, 11, 12
Weaver v. *Page*, No. 78-458-Orl-Civ-R (M.D. Fla. Apr. 9, 1979)	13

Constitution, statutes and regulation:

United States Constitution:	
Fifth Amendment, Due Process Clause	4
Fourteenth Amendment, Equal Protection Clause	4
Social Security Act, 42 U.S.C. 601 *et seq.*	1
42 U.S.C. 601	1
42 U.S.C. 602(a)	1
42 U.S.C. 602(a)(7)	1, 4, 5, 6, 7, 8, 11
42 U.S.C. 602(b)	1
42 U.S.C. 603(a)	1
42 U.S.C. 1988	6
45 C.F.R. 233.20(a)(7)(i)	2, 6

Miscellaneous:

Manual of the Missouri Division of Family Services, ch. I, Section III, f(5)	3, 5-6
S. Rep. No. 1589, 87th Cong., 2d Sess. (1962)	7

PREVIOUS PAGE WAS BLANK

STATEMENT

1. The Aid to Families with Dependent Children (AFDC) program (42 U.S.C. 601 *et seq.*) was enacted by Congress in 1935. The purpose of the AFDC program is to encourage the care of needy dependent children in their own homes or those of relatives in order to help maintain and strengthen family life and to assist parents or relatives to attain or retain the maximum self-sufficiency that is consistent with continuing parental care and protection. 42 U.S.C. 601. The AFDC program is "based on a scheme of cooperative federalism." *King* v. *Smith*, 392 U.S. 309, 316 (1968). States that elect to provide AFDC benefits to their residents receive reimbursement from the federal government on a matching-fund basis. 42 U.S.C. 603(a). These states must submit for approval by the Secretary of Health and Human Services (HHS) a State Plan that meets all requirements of the Social Security Act's AFDC provisions and implementing regulations. 42 U.S.C. 601, 602(a) and (b).

A State Plan must provide that the state agency will, in determining need, take into consideration income and resources of any child or relative seeking AFDC, "as well as any expenses reasonably attributable to the earning of any such income." 42 U.S.C. 602(a)(7). HHS regulations set forth the method of determining income: "The applicable amounts of earned income to be disregarded will be deducted from the gross amount of 'earned income,' and all work expenses, personal and non-personal, will then be deducted. Only the net amount remaining will be

applied in determining need and the amount of the assistance payment." 45 C.F.R. 233.20(a)(7)(i).

2. Missouri participates in the AFDC program and has an approved State Plan.[1] The State determines AFDC eligibility and the amount of benefits in the following manner: When an individual applies for AFDC, the income and resources of the family unit are first calculated. Missouri then applies a standard of need that includes allowances for such items as shelter, food and clothing. If the family's need, as calculated on the basis of the state standard, is in excess of the family's income and resources, the family is eligible for AFDC. The grant is measured by the amount by which need exceeds income and resources.

A section in the Manual of the Missouri Division of Family Services provides for deductions of work-related expenses from earned income in calculating the net income available to a child or relative seeking AFDC. All applicants and recipients may utilize a standard deduction of $30.00 per month for work-

---

[1] Missouri's current State Plan, which was approved by HHS on September 28, 1976, does not contain the limitations on itemized transportation, clothing, and meal expenses that are at issue in this case. But the Plan does refer to the Division of Family Services' Manual, in which these limitations are set out. Although state operating manuals are kept on file in the Regional Offices of HHS, they are not subject to the formal approval by HHS that is required for a state's plan. For some time prior to September 28, 1976, the Missouri Plan itself did contain the deduction limitations that are in question here; however, HHS approval was given to that plan before Colorado's maximum standard deduction was struck down by this Court in *Shea* v. *Vialpando*, 416 U.S. 251 (1974). HHS did not challenge the deduction provisions in the earlier Missouri Plan between the date of the decision in *Shea* and the 1976 revision of the Plan.

related expenses. If the applicant or recipient has expenses in excess of the $30.00 standard deduction, he may itemize and deduct all such expenses, subject to certain limitations set out in the Manual. Chapter I, Section III, f(5) of the Manual establishes separate limitations for deduction of work-related transportation, meal, and clothing expenditures. For transportation expenses, the applicant or recipient may deduct 17 cents per mile if he uses a private automobile for traveling to and from work. For meals during the work day, a deduction of up to $1.00 per day is allowed.[2] For work-related clothing, an AFDC applicant or recipient may deduct only the cost of any uniforms or special shoes required in connection with employment. Expenditures for other clothing worn to work may not be deducted. If the total of itemized expenditures (including expenditures for other items, such as child care, that are not subject to absolute limitations) exceeds the personal standard deduction of $30.00, the applicant or recipient may deduct the greater amount in calculating his net income.

3. Respondents Chambly, Loeffel, and Schoue filed this class action in the United States District Court for the Western District of Missouri on behalf of themselves and all other Missouri residents eligible to receive AFDC benefits (Pet. App. A-7). They alleged that the provisions of the Manual of the Missouri Division of Family Services that place absolute limitations on the amount of transportation, meal, and clothing expenses an AFDC applicant or

---

[2] When this suit was filed, the maximum deductions for these expenses were 15 cents per mile for transportation and 60 cents per day for meals (Pet. App. A-14 n.5). These figures have since been increased to the amounts indicated in the text (Pet. 7).

recipient may deduct are inconsistent with the Social Security Act's requirement that "any expenses reasonably attributable to the earning of * * * income" be considered in determining need. 42 U.S.C. 602 (a) (7).[3]

Respondent Chambly, an AFDC recipient, testified that her actual expenditures for lunch at a restaurant near her place of employment exceeded 60 cents per day, the applicable ceiling on deduction of expenditures for meals at the time. See note 2, *supra*. She also testified that although she was not required to wear uniforms or special shoes to work, it was necessary for her to purchase office-type clothing that she otherwise would not buy in order to comply with the dress code at the library where she worked. Chambly testified that the clothes she wears at home or when going out in the evening would not be suitable for her work and that she wears her office clothes only while on the job or commuting to and from her job (Pet. App. A-8).

Similarly, respondent Schoue testified that her expenses for lunch at a restaurant near her office were in excess of 60 cents per day and that, because of substantial car repair bills, her transportation costs exceeded the 15 cents per mile then allowed. She stated that she would sell her car if it were not for her job. Schoue also testified that because of dress requirements, she needed to purchase clothes, other than uniforms, for use solely in the office (Pet. App. A-8 to A-9).

---

[3] Respondents also contended that these limitations violate the Due Process and Equal Protection Clauses of the Constitution (Pet. App. A-5 to A-6), but the district court did not reach the constitutional questions in light of its disposition of the statutory claim (*id.* at A-12).

Respondent Loeffel's testimony showed that her transportation costs were higher than the 15 cents per mile then allowed due to her high-risk insurance premium and that her employment required the purchase of clothing that she wore almost exclusively for work (Pet. App. A-9 to A-10).

Because of the expenditure limitations in the Manual, the three named respondents were precluded from demonstrating that their actual expenses for transportation, meals, and clothing were reasonably attributable to the production of earned income. As a result, the AFDC grants to respondents Chambly and Schoue were lower than they would have been if their actual expenses for these items were deductible. Respondent Loeffel was denied an AFDC grant altogether because, without deducting her actual work-related expenses for clothing and transportation, the amount of her earned income rendered her ineligible.

4. The district court held that the limitations in the Manual on the amount that could be deducted for meals and transportation and the types of clothing for which expenses could be deducted violate 42 U.S.C. 602(a)(7). The court found the limitations unlawful because they preclude AFDC applicants and recipients from showing that their expenditures for meals, clothing, and transportation in excess of the Manual's limitations nevertheless are reasonably attributable to the production of earned income (Pet. App. A-10 to A-12, citing *Shea* v. *Vialpando*, 416 U.S. 251 (1974)). The court enjoined petitioners from enforcing Chapter I, Section III, f(5) of the Manual insofar as it establishes absolute standardized

deductions for the expenses in issue (Pet. App. A-13). The court of appeals affirmed on the basis of the district court's opinion (*id.* at A-1 to A-2).

ARGUMENT

The decisions below hold only that Missouri's *absolute* limitations on the amount or type of work-related expenses that may be considered in determining eligibility for AFDC benefits are inconsistent with 42 U.S.C. 602(a)(7); they do not hold that the particular expenses sought to be deducted by the named respondents are "reasonably attributable to the earning of * * * income" within the meaning of the statute. That is a question the State must now decide with respect to each respondent on an individualized basis. The court's narrow conclusion that absolute limitations are impermissible is compelled by this Court's decision in *Shea* v. *Vialpando, supra,* and does not conflict with the decision of any other court of appeals. Review by this Court therefore is not warranted.[4]

1. The Social Security Act and implementing regulations clearly provide for the consideration of all expenses reasonably attributable to earning income when determining eligibility for and the amount of AFDC grants. The statute, 42 U.S.C. 602(a)(7), requires state agencies to take "any" such expenses into consideration, and 45 C.F.R. 233.20(a)(7)(i) pro-

---

[4] Petitioners also challenge (Pet. 19-23) the award of attorney's fees to respondents pursuant to 42 U.S.C. 1988. This issue does not warrant review in light of the decisions last Term in *Maher* v. *Gagne,* No. 78-1888 (June 25, 1980), and *Maine* v. *Thiboutot,* No. 79-838 (June 25, 1980). See also *Hutto* v. *Finney,* 437 U.S. 678, 693-700 (1978).

vides that "all work expenses" shall be deducted. Moreover, the legislative history of 42 U.S.C. 602(a)(7) indicates that Congress intended the states to take "*fully* into account" expenses reasonably related to earning income. S. Rep. No. 1589, 87th Cong., 2d Sess. 18 (1962) (emphasis added), quoted in *Shea* v. *Vialpando, supra*, 416 U.S. at 263. The provisions of the Manual of the Missouri Division of Family Services at issue here are inconsistent with this statutory language, regulation, and legislative history. They are also inconsistent with the Court's decision in *Shea* v. *Vialpando, supra.*

In *Shea*, the Court considered the validity of a $30.00 per month ceiling imposed by the State of Colorado on the amount of work-related expenses (except for mandatory payroll deductions and child care expenses) that could be deducted from gross earned income in calculating need. The respondent in that case had purchased a used automobile to travel to and from work. Prior to adoption of the ceiling, she had been permitted to deduct her monthly mileage costs of $47.30 and $63.81 in monthly car payments. The effect of the ceiling was "to reduce respondent's monthly deductions for transportation expenses related to employment from $110 to $30," and the corresponding increase in her monthly net earned income rendered her ineligible for continued AFDC assistance. 416 U.S. at 257. The Court held that the Colorado provision was invalid under 42 U.S.C. 602(a)(7) because it was "in effect a maximum or absolute limitation upon the recognition of [work-related] expenses." 416 U.S. at 265. In the Court's view, the federal statute requires that an applicant or recipient's income *and* work-related expenses be considered on a case-by-case basis and that

> no limitation, apart from that of reasonableness, may be placed upon the recognition of expenses attributable to the earning of income. Accordingly, a fixed work-expense allowance which does not permit deductions for expenses in excess of that standard is directly contrary to the language of the statute.

416 U.S. at 260. The Court also concluded that the absolute limitation would result in a disincentive to work for all applicants or recipients whose reasonable work-related expenses exceeded the $30.00 standard deduction, thereby frustrating the congressional purpose underlying the provision for deduction of such expenses. *Id.* at 263-265.

The reasoning and conclusion in *Shea* v. *Vialpando* apply with equal force in the instant case. To be sure, Missouri has not adopted one maximum amount covering a number of different expenses, as Colorado had done in imposing a $30.00 deduction for all work-related expenses except mandatory payroll items and child care. Missouri has instead imposed separate limitations on the deductibility of three categories of expenditures. But this hardly serves to distinguish the result in *Shea* v. *Vialpando*.[5] An absolute limitation on one component of overall work-related expenses is equally inconsistent with the plain language of 42 U.S.C. 602(a)(7) and the implementing regulation, which require that "any" and "all" expenses reasonably attributable to earning income be considered and that such expenses be considered on a case-by-

---

[5] Indeed, in *Shea* v. *Vialpando* the only expenses at issue for the named plaintiff were for transportation; the standard deduction therefore operated as an absolute limitation for that single item.

case basis.[6] Such a limitation would also operate as a disincentive to work for applicants or recipients whose reasonable expenses for that single item fall outside the applicable limitation, just as the more comprehensive standard deduction involved in *Shea* v. *Vialpando* discouraged AFDC applicants from seeking employment.

Missouri's limitations on deductibility of transportation and clothing expenses also differ from the standard deduction involved in *Shea* v. *Vialpando* in that they do not involve a maximum total amount that may be deducted for these items in any given month.[7]

---

[6] Amici States of Mississippi, Rhode Island, Arkansas and New Hampshire plainly err in suggesting (Br. 10) that the Missouri provisions comport with federal law because they ensure "individualized" consideration of each item of expenditure for applicants and recipients generally. The statute and the decision in *Shea* v. *Vialpando* require individualized treatment of each applicant or recipient. Absolute limitations on particular expenditures that cannot be overcome by an individual applicant or recipient under any circumstances are inconsistent with this requirement.

[7] The limitation applicable to meals of $1.00 per work day does result in an absolute maximum amount that may be deducted for the month and therefore is squarely controlled by *Shea* v. *Vialpando*. Contrary to petitioners' assertion (Pet. 12-13), this case does not concern the circumstances in which expenditures for meals consumed during the work day must be considered "reasonably attributable to the earning of * * * income" or whether a state, in making that determination, may refuse to allow a deduction in an amount necessary to pay for the cost of a meal at a restaurant when the applicant or recipient can bring his lunch from home. The decisions below hold only that where meal expenses *are* considered to be reasonably attributable to earning income, the state may not impose a ceiling on the amount deducted that does not permit consideration of reasonable expenses for meals in excess of that amount.

In the case of the use of an automobile for transportation to and from work, the applicant or recipient may deduct 17 cents per mile. Missouri argues (Pet. 13-14) that this figure is reasonable because it is utilized by the State to reimburse its own employees and by the Internal Revenue Service for income tax purposes and that it is calculated to cover operating expenses, depreciation, repairs, maintenance, insurance, finance charges, and other relevant costs. We do not dispute that in many—perhaps most—situations the 17 cents per mile deduction will be sufficient to cover the applicant or recipient's reasonable automobile expenses. In the present case, however, respondents Schoue and Loeffel contend that 17 cents per mile is insufficient because of the high repair and insurance costs they incurred (Pet. App. A-9 to A-10). Assuming that Schoue's and Loeffel's expenditures for repairs and insurance, as well as other expenses they claim for use of their automobile in connection with work, are "reasonably attributable to the earning of * * * income" (a question the courts below did not decide).[8]

---

[8] The "reasonably attributable" test has two aspects: (1) whether the particular expenses are fairly *attributable* to the earning of income, and (2) whether the expenses are *reasonable* under the circumstances of the individual case. With respect to the first prong of the test, the Court cautioned in *Shea* v. *Vialpando* that a state should scrutinize with particular care expenditures claimed for automobiles or other items that are in large measure capital expenditures that will also be used for personal purposes unrelated to employment. But the Court recognized that such expenditures must be taken into account in appropriate circumstances on a case-by-case basis where an automobile is necessary to get to work and particular expenses are necessary to use the automobile. 416 U.S. at 256-257 n.4.

Under the second prong of the test, the State presumably could consider whether the particular expenditures for an automobile were reasonably necessary under the circum-

Missouri's policy is inconsistent with 42 U.S.C. 602 (a)(7) to the extent it bars them from deducting such expenses in excess of the amount calculated at the rate of 17 cents per mile.[9]

Missouri's restrictions on deductibility of clothing expenses also differ from the standard deduction involved in *Shea* v. *Vialpando* because they limit the *type* of clothing qualifying for a deduction (uniforms, special shoes, and other articles the use of which is limited to employment (Pet. 5)), rather than the *amount* that may be deducted. But the effect of Missouri's policy is to establish an absolute maximum of zero for the amount that may be deducted for clothing other than uniforms and comparable items

---

stances—*e.g.*, whether the monthly installment payment for the automobile was excessive because the applicant or recipient had purchased an unduly expensive car, or whether costs of maintenance or repair were excessive because they were for cosmetic or similar purposes rather than operation of the car in connection with work.

These and other factors remain open for evaluation by the State with respect to Schoue, Loeffel, and other class members.

[9] It is instructive in this regard that the Court in *Shea* v. *Vialpando* cited with apparent approval the Colorado regulation governing transportation expenses that was in effect prior to the adoption of the $30.00 standard deduction at issue in that case. The predecessor regulation provided for deduction of 5 cents per mile (plus parking fees) *and* for deduction of the cost of "[p]urchase, repair, or upkeep of a vehicle" where it was essential to retain employment and the county had approved the arrangement. See 416 U.S. at 254 & n.1. Similarly, here, AFDC applicants and recipients must be permitted to show that, in their particular circumstances, the 17 cents per mile deduction is not adequate to cover all of their transportation expenses reasonably attributable to earning income because of unusual insurance, repair, or other expenses.

or, put another way, to establish an irrebutable presumption that the cost of clothing that may be worn off the job can never be "reasonably attributable to the earning of * * * income." Viewed in either way, the absolute restriction is inconsistent with the statutory scheme and the decision in *Shea* v. *Vialpando*. Like an automobile, clothing is, in large measure, an item of expenditure that (except for uniforms and comparable articles) may be utilized for personal purposes unrelated to work. For this reason, states "should scrutinize with particular care" claimed expenses for clothing not usable exclusively for work, just as they should scrutinize capital-type expenditures claimed for an automobile. 416 U.S. at 256-257 n.4. And we quite agree with petitions (Pet. 13) that states should not be expected to finance, through an increased AFDC grant, the maintenance of separate wardrobes merely because, as a matter of taste, the recipient would prefer to wear clothing in his nonworking hours that is different from that required for work. But, especially where the applicant or recipient has taken new employment, it may be that he does not own clothing that is appropriate attire for work. If not, he may have to spend a considerable sum for clothing to obtain or retain his job. In such circumstances, the incremental expenses might properly be regarded as "reasonably attributable to the earning of * * * income," even though the particular articles of clothing could also be worn during nonworking hours.[10] Yet the policy contained in Mis-

---

[10] The recognition of clothing expenses, like other work-related expenses, must be considered on a case-by-case basis. The district court did not decide whether the named respondents in this case are entitled to deduct their clothing expenses.

souri's Family Services Division Manual would prohibit the deduction of such expenses under any circumstances. To this extent, the policy is inconsistent with the statute.

We do not contend that a State may not, in the interest of administrative efficiency, adopt a standard meal or mileage allowance as a convenient method of allowing deductions of work-related expenses in the general run of cases. As this Court stated in *Shea* v. *Vialpando, supra*, 416 U.S. at 265, "[i]t is, of course, not the adoption of a standardized work-expense allowance *per se* which [is] violative of [42 U.S.C. 602 (a)(7)], but the fact that the standard used by [the State] is in effect a maximum or absolute limitation upon the recognition of such expenses."

2. There is no conflict among the circuits on the question presented in this case. The only other court of appeals to consider a similar question summarily affirmed a decision striking down a 17 cents per mile transportation allowance that did not permit proof of actual expenses in excess of that amount. See *Fones* v. *Percy*, No. 78-C-191 (W.D. Wis. Dec. 7, 1978) (Br. in Opp. A-1 to A-5), aff'd, 601 F.2d 600 (7th Cir. 1979) (Table). See also *Perez* v. *Chang*, 438 F. Supp. 238 (D. Hawaii 1977).[11] Hence, review of the decision below is not warranted.

---

[11] The only contrary authority is a district court decision, *Weaver* v. *Page*, No. 78-458-Orl-Civ-R (M.D. Fla. Apr. 9, 1979) (Amicus Br. 13-18), that concerned only the validity of a 14 cents per mile allowance for transportation. Deductions for meals and clothing were not involved.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

JANUARY 1981

☆ U. S. GOVERNMENT PRINTING OFFICE: 1980 335106 218